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SUPREME COURT JUSTICE ALBERT JOHN GALEN:

POLITICIAN ON THE COURT

By

Rosalyn Oreskovich

B.A., University of Montana, 1970

and

B.A., University of Montana, 1974

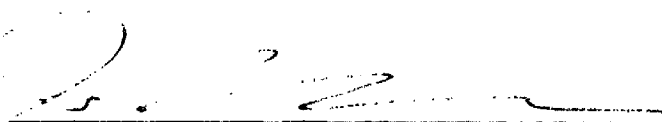
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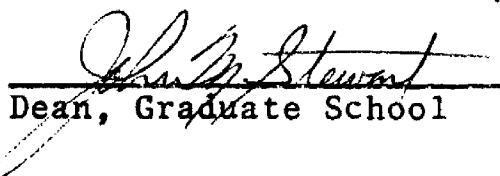
UNIVERSITY OF MONTANA

1974

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## CHAPTER I

### BACKGROUND

Albert John Galen was a political figure in Montana during the Joseph M. Dixon-Thomas J. Walsh-Burton K. Wheeler era. Unlike this trio he was a native-born Montanan. He served as attorney general from 1905 until 1913 and as an associate supreme court justice from 1921 until 1933. An avid seeker of office, Galen was a candidate for the Republican gubernatorial nomination in 1916, and attempted to unseat Senator Walsh in 1930. Although Galen attained only two offices and suffered three severe defeats, he possessed an influence greater than his record would indicate.

A first-generation Irish-American, Galen was a brother-in-law and political protégé of Senator Thomas H. Carter. After Carter's death in 1911, Galen inherited Carter's benefactors--the Amalgamated Copper Company and the railroads--and he remained consistently loyal to them and their allies.

Active politically throughout his life, Galen's career was epitomized in his role as justice. Here he wrapped himself in the cloak of judicial impartiality to aid The Company, to undermine his political opponents, and to advance his personal beliefs. Thus, Galen demonstrated that even after a person dons the judicial robe, he retains his biases, his interests, and his loyalties. Moreover, by transcribing these

prejudices into legal opinions, Galen proved that a court can also be a political body.

\* \* \* \* \*

Albert John Galen was born January 16, 1876, on a ranch in the Crow Creek valley, near Radersburg in southwestern Montana. Radersburg is twenty miles from Townsend in what is now Broadwater County; in 1876 it was Jefferson County. Thus, Galen was one of the few native-born politicians of his generation.<sup>1</sup>

Albert was of Irish descent. His mother was Matilda M. Gilloghy. Born in 1837 in Ireland, she was brought to the United States as an infant. Her parents settled in Bangor, Maine.<sup>2</sup> Albert's father was Hugh Francis Galen, who was born in Castle Derg, County Tyrone, Ireland, March 17, 1826.<sup>3</sup> Matilda died in 1891. Four years later Hugh married Laura Teague

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<sup>1</sup>Application for Appointment, United States Supreme Court, Albert J. Galen to Herbert Hoover, March 30, 1930, Presidential Secretarial File, Hoover MSS., Herbert Hoover Presidential Library, West Branch, Iowa. Death Certificate, State Bureau of Vital Statistics, Helena, Montana, June 1, 1936.

<sup>2</sup>Helena Independent, December 28, 1891. "In Memoriam Albert J. Galen" 106 Mont. XV-XVII (1937-38).

<sup>3</sup>Helena Independent, May 31, 1899. Helen Fitzgerald Sanders, A History of Montana, Vol. II (Chicago: Lewis Publishing Co., 1913), p. 990; Progressive Men of Montana (Chicago: A. W. Bowen, n.d.), p. 168.

of Helena.<sup>4</sup>

Hugh's career exemplified the opportunities for upward mobility for ambitious new settlers in the United States. He emigrated from Ireland in 1845 in the midst of the great famine.<sup>5</sup> Almost from his arrival on these shores he was an independent entrepreneur. He purchased a team of horses, probably from savings accumulated while working in Ireland, and hauled logs to sawmills in Bangor, Maine. In the spring of 1847 he began merchandising in New Orleans. A year later he expanded his enterprises by freighting to the west coast. Galen saw the possibilities in the Pacific Area, and he spent the next twenty years of his life there alternating between building and operating sawmills and hotels, and in general trading.

Hugh Galen finally achieved substantial financial success after the Civil War when he moved to the raw Montana Territory. In 1866 he began freighting between Helena, Fort Benton, Bozeman, and Salt Lake. In 1869 he added a stage route between Bozeman and Helena. This was a highly profitable enterprise, as he carried the United States mails and troops. Hugh Galen was both pragmatic and energetic. After the advent of the railroads in 1883 made stage lines unattractive investments, he demonstrated his financial acumen by

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<sup>4</sup>Helena Independent, December 2, 1891, May 31, 1899.

<sup>5</sup>P. S. O'Hegarty, A History of Ireland Under the Union (New York: Kraus Reprint Co., 1969), p. 291.



investing in other enterprises, including the Capitol Lighting Company of Helena and the Montana National Bank. He also owned a number of valuable ranches in Jefferson, Madison, and Lewis and Clark counties. He raised both crops and sheep.<sup>6</sup>

Hugh Galen was obviously more interested in business than in politics. An unwavering Democrat, unlike his son Albert, he only once was a candidate for office. In 1876 he won a seat in the state house of representatives from Jefferson County.<sup>7</sup>

Hugh and Matilda had seven children, four of whom attained a high degree of status in the fluid frontier society. The eldest, Ellen, was born in Tumwater, Washington Territory, in 1861. She was educated in the middle west at Saint Mary's College in Notre Dame, Indiana. She majored in music, specializing in the harp.<sup>8</sup> In 1886 she married Thomas H. Carter. Carter, then a thirty-year-old Helena lawyer, would confer political prestige upon the Galen family, since he would serve as territorial delegate, congressman, senator, national G.O.P. chairman and Montana party boss.<sup>9</sup> Next came James L., who was

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<sup>6</sup>Ellis L. Waldron, Montana Politics Since 1864 (Missoula: Montana State University Press, 1958), p. 35. (Hereafter cited as Waldron, Atlas.)

<sup>7</sup>Helena Record-Herald, July 3, 1916. Helena Independent, May 31, 1899.

<sup>8</sup>Enclosures in Mrs. Dorothy Jaroszewski to Jules A. Karlin, January 22, 1968, Dixon MSS.

<sup>9</sup>Paul A. Phillips, "Thomas Henry Carter," in Allen Johnson and Dumas Malone, eds., Dictionary of American Biography (New York: Scribners, 1929), Vol. III, pp. 544-545.

born in Helena in 1871 and educated at Santa Clara University. Jim was a teller in the Merchant's National Bank of Helena until his appointment as superintendent of Glacier Park in 1912.<sup>10</sup> This was patronage for Montana's Republican political machine. Ellen Carter requested the appointment, and President Taft said he wished to oblige her and show his appreciation to her late husband. He also said that his political friends in Montana recommended the appointment. Among those supporting Galen were: Louis Hill of the Great Northern Railway, Thomas A. Marlow, a Helena banker and Carter's closest friend, Frank Conley, warden of the state prison, Montana Supreme Court Chief Justice Theodore Brantly, and W. B. Rodgers and L. C. Evans who were counsel for the Amalgamated.<sup>11</sup> Later, Galen served as superintendent of Mount McKinley National Park.<sup>12</sup> The third and fifth members of the Galen family lived only a short time. Charles F., who was born in 1863 in Idaho Territory, died at the age of eleven.<sup>13</sup> Mary Agnes was born in December of 1873, and died in February of 1875.<sup>14</sup> The fourth child was H. Frank. Born in 1868 in

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<sup>10</sup>Helena Independent, January 16, 1939.

<sup>11</sup>William Howard Taft to Walter L. Fisher, August 5, 1912; Thomas A. Marlow to Carmi A. Thompson, August 13, 1912; for examples of supporters, see Frank Conley to W. H. Taft, October 24, 1912, telegram; J. L. Galen to W. H. Taft, November 11, 1912, William Howard Taft MSS, Library of Congress.

<sup>12</sup>Helena Independent, January 16, 1939.

<sup>13</sup>Missoula New Northwest, August 6, 1875.

<sup>14</sup>Sanders, A History of Montana, vol. II, p. 990.

Helena, he graduated from Cornell in electrical engineering. He worked for the Edison Company in New York. Long troubled by a rheumatic heart, he died at the early age of twenty-nine. He was the only one of the Galen children without political connections or ambitions.<sup>15</sup> Albert was followed by Matilda, who was born in Jefferson County in 1878. She married Thomas J. Walker of Silver Bow. An attorney, he became a state senator, and was later appointed to the United States Customs Court by Franklin D. Roosevelt.<sup>16</sup> His brother Frank C. Walker was Postmaster General and Democratic national chairman under Franklin D. Roosevelt.<sup>17</sup> Thus, aided by education and fortunate marriages, a strong sense of determination, the Galens became one of Montana's most prominent political families.

Although the Galens had homes in Helena and at the stage station near Radersburg, Albert was reared in the capital. He received his early education in the public and parochial schools of that city.<sup>18</sup>

Albert followed in the footsteps of his brothers and sisters, and went east to school. He began his studies in

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<sup>15</sup> Helena Independent, December 28, 1897.

<sup>16</sup> Butte Montana Standard, January 19, 1945.

<sup>17</sup> Burton K. Wheeler (with Paul F. Healy), Yankee From the West (New York: Doubleday & Co. Inc., 1962), p. 75.  
Maxine Block, ed., Current Biography--Who's News and Why, 1940 (New York: H. W. Wilson Co., 1940), pp. 833-835.

<sup>18</sup> Helena Record-Herald, July 3, 1916.

the one-year preparatory program at the University of Notre Dame. In 1892 he studied at Manhattan College in New York.<sup>19</sup> Albert then returned to Notre Dame, where he earned a Bachelor of Laws degree in 1896. While at Notre Dame Albert played football, and served as a reporter at the university moot court.<sup>20</sup> Although the position he played is not known, he probably played in the line, as he was six feet one inch tall and weighed around two hundred pounds. Albert's participation demonstrated his ambition, competitiveness, and aggressiveness, as extra-curricular activities at this time were less highly organized than they are today.<sup>21</sup> Galen continued his legal studies at the University of Michigan Law School. He received another L.L.B., as he apparently wished to acquire additional knowledge in constitutional law, jurisprudence, remedies, and courtroom practice.<sup>22</sup>

Galen returned to Montana in 1897, and was admitted to the bar in the same year. (He had previously been licensed to practice in both Indiana and Michigan.) He became a law clerk in the office of John B. Clayberg and Milton Gunn. Clayberg and Gunn were former law partners of Carter.<sup>23</sup>

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<sup>19</sup>Albert J. Galen to Herbert Hoover, March 30, 1930, Hoover MSS.

<sup>20</sup>Letter, Richard J. Sullivan to Rosalyn Oreskovich, July 21, 1972.

<sup>21</sup>Albert J. Galen (grandson), taped interview, Los Angeles, California, June, 1972.

<sup>22</sup>Enclosures, Helen L. Betts to Rosalyn Oreskovich, August 31, 1972.

<sup>23</sup>Certificate to Practice Law, Albert J. Galen, Clerk

As Albert embarked on his new career, he married Ethelene Bennett on February 22, 1898. Ethelene, who had lived three blocks from Albert in their childhoods, was the daughter of one of Montana's pioneer citizens, Willard Bennett.<sup>24</sup>

Willard was a man of substantial wealth. He constructed the first system of water works for Deer Lodge. He also owned several mining properties, and large sheep ranches in Broadwater and Custer counties. A lifelong Republican, he served Granite County in the legislature in 1894.<sup>25</sup>

Unlike the Galens, the Bennetts were a small Protestant family. Ethelene had three brothers. Milton, a sheep rancher near Billings, was a partner of his father. George, a mining engineer, worked near Bozeman. Anson died when he was quite young. The Bennetts were Christian Scientists, and Willard Bennett was a Free Mason.<sup>26</sup>

Albert's choice of a bride was unusual. He was a staunch Irish-Catholic, and Irish-Catholics rarely married out of the Church during this era.<sup>27</sup> However, Willard Bennett was prosperous, and had many Masonic friends who could aid Galen's political career. Thus, Ethelene was probably a political

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of State Supreme Court, Helena, Montana, 1897. 106 Mont. XV-XVII (1937-1938).

<sup>24</sup>Helena Record-Herald, July 3, 1916.

<sup>25</sup>Helena Record-Herald, April 19, 1924. Progressive Men of Montana, p. 45.

<sup>26</sup>Helena Record-Herald, April 19, 1924; Albert J. Galen to Rosalyn Oreskovich, June 28, 1974.

<sup>27</sup>Missouliau, October 14, 1904. Edward M. Levine, The Irish and Irish Politicians (Notre Dame, Indiana: University of Notre Dame Press, 1966), pp. 69-101.

asset.

In retrospect, it seems evident that the Galens had the ability to contract suitable marital alliances--Carter, Walker, and now Bennett.

Albert and Ethelene had one child, James Albert Galen, who was born on May 10, 1902.<sup>28</sup>

After Galen had acquired experience as a law clerk, he alternated between practicing by himself and with partners. He was a law partner of William E. Moore from 1897-1899 and Edward W. Beattie from 1899-1901. Then, in 1905, he joined Tom Carter's former partner, Frank Mettler, and he remained a member of that firm until 1921. The opportunity to be a replacement for Carter in a well-established law firm<sup>29</sup> is an example of one of the benefits Galen received from having Carter's wholehearted backing.

In the meantime, like most young lawyers, Galen became an avid "joiner." His membership included several fraternal organizations, the Elks, the Woodmen of the World and the Montana Club of Helena.<sup>30</sup>

Galen's political career began in the Republican state convention of 1904. Brother-in-law Tom Carter dominated the convention, which was held in Billings on September seventh.<sup>31</sup>

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<sup>28</sup>Albert J. Galen to Herbert Hoover, March 30, 1930, Hoover MSS.

<sup>29</sup>Ibid.

<sup>30</sup>Helena Record, November 6, 1904.

<sup>31</sup>Butte Miner, September 8, 1904; Helena Record, September 9, 1904.

After the formalities were completed, Galen became the beneficiary of Carter's power. E. D. Weed of Lewis and Clark County nominated Albert for attorney general.<sup>32</sup> Galen opposed Robert O'Hara of Hamilton, who had been nominated by H. C. Schultz of Ravalli. O'Hara was a friend of Joseph M. Dixon, the budding rival of Carter for supremacy in the G.O.P.<sup>33</sup> Galen secured 268 votes to O'Hara's 182. O'Hara then moved to make Galen's nomination unanimous.<sup>34</sup>

Across the state, Democratic newspapers attempted to capitalize on Galen's nomination, using it to illustrate the power of Carter in the convention. The Butte Miner, the Helena Independent, the Great Falls Tribune, and the Hamilton Western News all argued that Galen was inexperienced and hardly a professional lawyer.<sup>35</sup> The Great Falls Tribune remarked about Carter that "Republicans as well as Democrats do not take kindly to his evident purpose to take care of his family at the expense of the state."<sup>36</sup> The Butte Miner called the nomination "local nepotism," and added, "There is some-

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<sup>32</sup>Helena Record, September 9, 1904.

<sup>33</sup>Robert A. O'Hara to Joseph M. Dixon, November 5, 1902, Dixon MSS, University of Montana Archives, Missoula, Montana.

<sup>34</sup>Helena Record, September 9, 1904; Anaconda Standard, September 9, 1904.

<sup>35</sup>Butte Miner, September 10, 1904; Helena Independent, September 16, 1907; Great Falls Tribune, September 9, 1904; Hamilton Western News, September 21, 1904.

<sup>36</sup>Great Falls Tribune, September 9, 1904.

thing sublimely ridiculous in passing up at least a dozen able men . . . to select a young lawyer whose only claim rests in the fact that he was related by marriage to the republican boss of the state."<sup>37</sup>

At their state convention ten days later, the Democrats nominated Charles H. Hall. He won on the second ballot by defeating Samuel V. Stewart of Madison County.<sup>38</sup> Hall, a Missoulian, had been elected county attorney in 1900 and 1902.<sup>39</sup> In addition, the Democratic newspapers approved his nomination.<sup>40</sup> Hall acquired the nominations of Heinze's Labor party, the Anti-Trust Republicans, and the Populist party. The Heinze Labor party had been formed to fight the Amalgamated Copper Company in Montana politics, and Heinze induced the other parties to support the candidates who were most antagonistic to The Company. Since the Carter machine was linked to the Amalgamated and not favorably disposed towards the workingman, the Heinze forces were anti-Galen.<sup>41</sup>

Heinze's Butte Evening News and the Democratic Butte Miner stressed the issues upon which the candidates themselves focused. They denounced the Carter machine rather

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<sup>37</sup> Butte Miner, September 10, 1904.

<sup>38</sup> Ibid., September 16, 1904.

<sup>39</sup> Tom Stout, Montana: Its Story and Biography (Chicago: American Historical Society, 1921), p. 458.

<sup>40</sup> Hamilton Western News, September 21, 1904; Helena Independent, October 13, 1904.

<sup>41</sup> Butte Evening News, October 17, 1904; Helena Independent, October 15, 1904.



than Galen directly, and Hall did the same.<sup>42</sup>

The campaign was barely underway, however, when it was learned that someone had omitted Galen's name from the lists of candidates filed with the Montana secretary of state.<sup>43</sup> Former United States Senator Lee Mantle of Butte reassured the faithful, saying, "By an unfortunate oversight Mr. Galen's name was omitted from the original certification. No friend of Mr. Galen's need feel concerned over it . . . ." <sup>44</sup> The Democratic newspapers tried to capitalize on the mistake, and claimed that it was part of a plot by some Republican leaders to obtain the support of Heinze and his allies for William Lindsay, the Republican candidate for governor. According to two Democratic newspapers, Lindsay would aid Heinze's real choice for attorney general, Peter Breen, a Butte labor leader, if the Heinze people would in turn back him.<sup>45</sup> However, the Montana Supreme Court settled the issue after Galen instituted mandamus proceedings to have his name placed on the ballot. The court ruled in favor of Galen, stating that he should not be held accountable for the neglect of duty by others.<sup>46</sup>

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<sup>42</sup>Butte Miner, October 15, November 4, 1904; Butte Evening News, October 25, 1904.

<sup>43</sup>Missoulian, October 14, 1904.

<sup>44</sup>Helena Record, October 12, 1904.

<sup>45</sup>Butte Miner, October 13, 1904; Helena Independent, October 15, 1904.

<sup>46</sup>State ex. rel. Galen v. Hayes, 31 Mont. 327 (1904).

The campaign continued with tours by Hall and Galen. Hall contended he was not a friend of the corporations; instead he was dedicated to the interests of the workingman. He argued that if one were to support Theodore Roosevelt's "imperialistic policy," there would be a new country named the "United States of America and Asia."<sup>47</sup> Galen campaigned on a lower key, promising only impartial justice and the enforcement of the laws. The G.O.P. press emphasized his education and his Irish background rather than what he said.<sup>48</sup>

In November Galen defeated Hall by a vote of 30,895 to 27,555. Evan O. Jackson, an unknown, ran as the Socialist candidate and garnered 3,843 votes.<sup>49</sup>

Galen ran ahead of the Republican state ticket. One can only speculate on the reasons for his success. First, he was the recipient of Tom Carter's political influence. Second, Galen received statewide publicity after the omission of his name from the list of G.O.P. nominees. Third, he had married into the powerful Bennett family. Lastly, he was new to politics, and thus had not acquired many enemies.

Galen's entrance into politics had been sudden but eventful, but he already exemplified the characteristics of the Galens. They were a hard-driving, status-seeking family in

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<sup>47</sup> Butte Miner, November 4, 1904.

<sup>48</sup> Missoulain, October 14 and 29, 1904; Butte Miner, October 13, 1904.

<sup>49</sup> Waldron, Atlas, p. 111.

almost everything they undertook--marriage, education, business, politics.

## CHAPTER II

### ATTORNEY GENERAL, 1905-1913

An apprentice in politics, Albert, as attorney general, displayed loyalty to The Company and the railroads. Moreover, he began a lifelong pattern of utilizing the law to help his friends and to further his prejudices. An unwavering Carterite, Galen had learned the political trade well.

As Galen embarked upon the attorney generalship, he embodied the ideas of the Carter machine. Although Carter's long experience in Washington had increased his sophistication, his Montana faction remained somewhat primitive. Its members shared the ties of its leader to Taft and the Old Guard of the Republican party. It was virtually a political arm of the Amalgamated Copper Company and the railroads. Carter's chief aides in Montana included John G. Morony, a Great Falls banker, Thomas A. Marlow, a Helena banker and investor, and John E. Edwards, a Forsyth entrepreneur and state senator. The Carter machine was unswayed by the winds of Progressive change. It opposed the direct primary and other political reforms; it resisted alternations in Montana's inequitable system of taxation, which favored The Company and its allies; and it operated on a bipartisan basis, when necessary.

Galen was sworn in as attorney general on the second of January, 1905. It was a traditional ceremony, with the mem-

bers of the supreme court and the new attorney general exchanging compliments.<sup>1</sup>

When Galen became the state's highest legal officer, he did so illegally, as he was only twenty-eight years old. Article VII, Section 3, of the Montana Constitution, stated that "No person shall be eligible . . . to the office of attorney general unless he shall have attained the age of thirty years." Although Galen would have his twenty-ninth birthday on the sixteenth of January, he was still not of age, of course.<sup>2</sup> Thus Albert's service during his first year as the state's highest law enforcement officer was illegal.

Interestingly but erroneously, Galen's family now says that impeachment proceedings were instituted against him but were subsequently halted because he became of age.<sup>3</sup>

Determining why Galen was allowed to serve is difficult, given the muckraking nature of the press. A visceral reaction to the mystery would be that Carter was again exerting his power over Montana politics. After all, he had maneuvered the nomination of his brother-in-law, and his friends on the Montana Supreme Court had ruled favorably for Galen

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<sup>1</sup>Helena Independent, January 3, 1905.

<sup>2</sup>Montana, Constitution (1889), art. VII, sec. 3. Death Certificate, State Bureau of Vital Statistics, Helena, Montana, June, 1936.

<sup>3</sup>Albert J. Galen (grandson), taped interview Los Angeles, California, June, 1972.

after his name was omitted from the lists of candidates. However, Carter's influence did not extend over the Democrats or the unpredictable Charles H. Hall, Thus, a more logical answer could be that no one thought to inquire about Galen's age, and assumed that he was of age or he would not be running for office.<sup>4</sup>

Galen's first priority as attorney general was to employ his own staff. Galen inherited Frank Mettler and George P. Potter, the Democratic assistant of Attorney General James Donovan. But Galen soon replaced Mettler with W. H. Poorman. Mettler and Galen being partners, Mettler returned to their legal practice.<sup>5</sup>

Galen was an active attorney general. Like most attorneys general of this era, he and his assistants argued all of the state's cases before the Montana Supreme Court.<sup>6</sup>

Galen believed that the most important case of his first term was the so-called Bond case in 1906. This involved the question of the constitutionality of a law passed by the legislature in February of 1905 which allowed funds derived from the lands granted by the "Enabling Act" to be utilized for additional buildings and equipment. In accordance with state law the Board of Land Commissioners issued bonds in the amount

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<sup>4</sup> 1 Att'y. Gen. Rep. I (1907).

<sup>5</sup> Helena Independent, March 26, 1905.

<sup>6</sup> 1-28 Mont., passim, 1900-1920.

of seventy-five thousand dollars to several Montana citizens on May 1, 1905. The bonds were sold in denominations of one thousand dollars, bearing interest at 4 percent.<sup>7</sup>

The Bond case originated when Charles S. Haire, an architect who built an addition on the State Normal School at Dillon, requested payment from State Treasurer James H. Rice. On the advice of Galen Rice refused to pay. Galen, using a North Dakota case as a precedent, argued that the United States Enabling Act which made land grants to Montana could be used only for the support and the maintenance of institutions as the fund itself had to remain inviolate.<sup>8</sup> Besides dismissing Haire's claim, Galen in effect invalidated the bonds themselves.

Galen also denounced the Board of Land Commissioners of which he was a member. Attempting to clear himself, Galen said,

At the time the law was considered I had some misgivings as to its constitutionality and the legality of any bond issue . . . . After the passage of the law, I was called upon by . . . Board . . . to prepare the bond . . . the form was prepared by me with strict reference to the provisions of the law authorizing the bond issue and not with regard to the constitutionality. The question of illegality was not raised . . . because of the presumption of constitutionality which always attaches to acts of the legislature.<sup>9</sup>

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<sup>7</sup>1 Att'y. Gen. Rep. XI-XIV, 204-205 (1907); Laws of Montana, Chapter 3, 1905.

<sup>8</sup>North Dakota v. McMillan, 96 N.W. 310 (1903).

<sup>9</sup>1 Att'y. Gen. Rep. V, 205-206 (1907).

Galen's comments appeared to be an apologia for his failure to give his colleagues adequate legal advice.

The reaction of the press was mixed, but mild. The Republican Billings Gazette said that "Galen made the state institutions self supporting," while the Democratic Helena Independent called his opinion an "attack" upon the taxpayers.<sup>10</sup> It appeared that the press was waiting to see what the courts would say.

The controversy was litigated in the Montana Supreme Court with M. S. Gunn and W. T. Pigott acting for Haire, and Galen representing the state. The basis of the arguments of the attorneys for Haire was that the Enabling Act was both a law and a contract. Since it was a contract, it was protected by the United States Constitution, and the Montana legislature could not pass a law which interfered with that obligation. In addition to presenting the North Dakota case that he used in his opinion, Galen argued that a state institution was not a legal entity, and could not contract debts in excess of the appropriations made by the legislature.<sup>11</sup>

In a unanimous decision the court held that the bonds were issued illegally, and were thus void. The supreme court declined to be bound by the North Dakota precedent. Instead, it cited Article XI, Section 12, of the Montana

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<sup>10</sup> Billings Gazette, October 17, 1906; Helena Independent, October 10, 1906.

<sup>11</sup> State v. Rice, 33 Mont. 365, 375-377 (1905).



State Constitution which said, "The funds of the State and of all other state institutions shall forever remain inviolate." The court interpreted that section to mean that the principal of the account could not be expended, but could only be used to draw interest.<sup>12</sup>

In its reasoning the court divided along political lines. Republican Justice William Holloway wrote the opinion and Chief Justice Theodore Brantly, another Republican, concurred. But Democratic Justice George Milburn wrote a separate concurring opinion. In a circuitous manner he criticized the governor, the secretary of state, and the attorney general who composed the Board of State Land Commissioners which had issued the bonds. He felt that since they had acted unconstitutionally in issuing the bonds, "they should be part of its history."<sup>13</sup> Thus Milburn, who was perturbed by the embarrassing situation the state was placed in by having its credit rating jeopardized, felt compelled to denounce publicly the Land Commission.

However, the criticisms by Justice Milburn were mild compared to the diatribes the Democratic newspapers leveled at Galen after the reading of the opinions. The Great Falls Tribune said that "as a result of the action of the attorney general and the Supreme Court . . . we have been brought into the present humiliating and distressing situation by

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<sup>12</sup>Id. at 384-393.

<sup>13</sup>Id. at 393.

hasty and ill-considered action."<sup>14</sup> The Butte Miner said that the "opinion was entirely unnecessary . . . no other citizen would have thought of contesting the legality of the bonds . . . [Galen] was the official who has created all the trouble for the commonwealth."<sup>15</sup>

Two Republican papers--the Missoulian and Billings Gazette--tried to placate the bondholders. After complimenting the attorney general on his legal intelligence, they pointed out that some action had to be taken to enable the bondholders to collect from the state.<sup>16</sup>

The decision was appealed to the United States Supreme Court. In a unanimous opinion written by Justice William Moody, the decision of the Montana Supreme Court was upheld. Moody's ruling was based on the premise that the legislature must act in subordination to the Montana Constitution. Thus, the highest Court agreed with its Montana counterpart that Article XI, Section 12, governed the "Enabling Act."<sup>17</sup>

The legislature came to the rescue of the bondholders. In 1907 it passed a bill allowing the bondholders first priority in trading in their void bonds for proposed state bonds. They were also allowed a cash refund of the purchase price of their bonds. The one-quarter mill levy which was

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<sup>14</sup>Great Falls Tribune, January 10, 1906.

<sup>15</sup>Butte Miner, January 10, 1906.

<sup>16</sup>Missoulian, January 10, 1906; Billings Gazette, January 10, 1906.

<sup>17</sup>Havre v. Rice, 240 U.S. 291 (1907).

proposed to meet the expenses of the bill received the approval of the voters in November, 1908.<sup>18</sup>

Galen said he was pleased with the outcome of the appeal, but he was by no means oblivious to the press. He said that "at the time this question was raised much agitation, newspaper comment and thoughtless statements were in evidence."<sup>19</sup> Despite his apparent sensitiveness to the press Galen had won a major legal battle without too much public animosity once the bondholders received their money. However, Galen then contended that within fifteen years each of the educational institutions in the state would be self-supporting, and this prediction has not been fulfilled.

The next major litigation was the Treasurer case, which also had political overtones. On October 25, 1906, Galen instituted a civil action against Republican State Treasurer James A. Rice and his two Democratic predecessors, Anthony H. Barrett and Timothy E. Collins, and their bondsmen, for the purpose of acquiring for the state the interest that they had received on state funds. The public moneys had been deposited with various banks in the state, but the interest earned on them was not being credited to the state. Galen was suing Rice for sixty thousand dollars, and Barrett for eighty thousand dollars.<sup>20</sup>

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<sup>18</sup>Laws of Montana, Chapter 88, 1907; Waldron, Atlas, p. 128.

<sup>19</sup>1 Att'y. Gen. Rep. XI (1906).

<sup>20</sup>Ibid., p. IV. Helena Independent, October 26, 1906.

The case was the result of a 1904 Republican campaign promise. The platform pledged that "We favor the semi-annual collection of taxes and are opposed to the use of public money for private gain."<sup>21</sup> When Rice assumed office he ignored this commitment, like most politicians. It was rumored that Galen brought suit against him because of public opinion and Democratic criticism.<sup>22</sup> Being a loyal party man, however, Galen tried to place the Republican party in a more favorable light by linking two Democrats to the corruption. The Democratic Great Falls Tribune pointed out this maneuver, and tried to lighten the blow by emphasizing that the Republicans had not fulfilled their platform promises.<sup>23</sup> However, none of the men ever stood trial. Barred by the three-year statute of limitations, the charges against Collins were dropped. Galen then withdrew the other suits, because he felt their purpose had been served when the state legislature passed a law which required the treasurer to account for interest received from state deposits of public funds.<sup>24</sup> Self-laudatory, Galen announced that the interest accumulated by the enforcement of the law amounted to \$22,175 in fiscal year 1907-1908.<sup>25</sup> Thus, it seems that the Democrats

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<sup>21</sup>Missoulian, September 9, 1904.

<sup>22</sup>Great Falls Tribune, October 26, 1906.

<sup>23</sup>Ibid.

<sup>24</sup>Laws of Montana, p. 354, 1907.

<sup>25</sup>2 Att'y. Gen. Rep. IX (1909).

forced the Republicans into keeping a campaign promise, and Galen, in turn, used his political finesse to keep his party from appearing any worse than its rivals.

Other matters of importance during Galen's first term were the Beef Trust case, criminal prosecutions, and gambling laws. The Beef Trust case--State of Montana v. Cudahy Packing Co.--was important because it demonstrated Galen's determination to demand a larger appropriation in order to enlarge and upgrade the attorney general's office. The Beef Trust case stemmed from a resolution passed by both houses in 1905 which instructed the attorney general to investigate and prosecute all trusts which were in violation of Montana statutes.<sup>26</sup> Although the state supreme court declared Montana's anti-trust laws unconstitutional, this case gave Galen a platform from which he could express his desires.<sup>27</sup>

Galen also participated as a prosecuting officer in several trials at district court level involving heinous crimes and murders.<sup>28</sup> Thus, Galen purportedly contributed to the public beyond the call of his office, and, in turn, he received some free publicity which would be helpful in the event he ever decided to run for a higher office.

Throughout his term, perennial violations of the state gambling statutes plagued Galen. He sent letters to the

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<sup>26</sup>Laws of Montana, p. 375 (1905).

<sup>27</sup>State v. Cudahy Packing Company, et al., 33 Mont. 179 (1905).

<sup>28</sup>2 Att'y. Gen. Rep. VII-IV (1907).

county attorneys, instructing them to stop all gambling in their counties.<sup>29</sup> He sent a special letter to John Quinn, the sheriff of Silver Bow County, asking him to have gambling stopped there, since it was running rampant. The sheriff's office assured Galen that gambling had ceased.<sup>30</sup> However, Galen realized that asking for a miracle would have elicited more action, and he then sent his staff to help organize investigation teams. This effort was also futile, however.<sup>31</sup> Gambling continued in Silver Bow, of course, and Galen eventually chose to ignore it. In his annual report to the governor he said, "We are informed and believe, all the large gambling houses have since discontinued business."<sup>32</sup>

Thus, Galen's first term revealed his developing political acumen. Galen excused himself for not acting sooner on the bonds by placing the onus for the unconstitutional actions on the other Land Board members. He had no choice but to indict a fellow Republican. Being loyal to his party, however, he included the Democrats despite knowledge that any freshman law student should possess--that is, to check the statute of limitations prior to seeking indictments.

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<sup>29</sup>2 Att'y. Gen. Rep. XCIX (1909).

<sup>30</sup>Ibid.; Helena Independent, March 18, 1906, October 18, 1908.

<sup>31</sup>1 Att'y. Gen. Rep. XX-XXI (1907).

<sup>32</sup>Ibid.; Helena Independent, October 18, 1908. John K. Hutchens, One Man's Montana (Philadelphia: J. P. Lippincott Co., 1964), pp. 172, 219-220.

Galen chose to run for re-election in 1908, and received the renomination without opposition. Galen then "briefly thanked the Convention and reviewed his record." However, according to the Democratic Helena Independent, Galen's comments really avoided a discussion of contemporary problems.<sup>33</sup>

Galen's Democratic opponent was John H. Tolan, an Anacondan and a former county attorney. Tolan defeated Sam V. Stewart of Virginia City for the nomination. This was Stewart's second defeat, since he had been passed over for Hall in 1904. Like Galen, Tolan was an Irish-Catholic and would appeal to that powerful faction in the Anaconda-Butte area.<sup>34</sup>

1908 being a presidential year, the campaign focused on the national candidates, rather than on the attorney general post. Galen's campaign was highlighted by a tour with Senator Carter, Representative Charles N. Pray and gubernatorial candidate Edward Donlan. They started in Miles City, and continued throughout the eastern portion of the state.<sup>35</sup> Galen's typical talk consisted of a report of his first term, a discussion of the aims of his party, and praise of fellow Republicans.<sup>36</sup>

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<sup>33</sup>Helena Independent, September 19, 1908; Helena Herald, September 18, 1908.

<sup>34</sup>Hamilton Western News, September 9, 1908; J. M. Kennedy statement in Albert J. Galen to T. H. Carter, March 23, 1909, Carter MSS.

<sup>35</sup>Billings Gazette, October 14, 1908.

<sup>36</sup>Missoulian, October 14, 1908; Billings Gazette, October 17, 1908.

Tolan also toured the state, giving speeches with Democratic gubernatorial candidate Edwin L. Norris. Tolan lauded his party, and stressed Galen's being the brother-in-law of Tom Carter. He emphasized that he "did not have a brother-in-law to push him along."<sup>37</sup> He also recommended that people tell their friends, "Tom, of course, it is all right to keep it in the family, but don't you think you'd better mix it up a little and come through for one of our boys."<sup>38</sup> In addition, Governor John A. Johnson of Minnesota supported Tolan, a former employee of his.<sup>39</sup>

In discussing the state election the newspapers concentrated on the gubernatorial candidates and the Carter machine, and largely ignored the contest between Galen and Tolan. The Democratic Butte Miner was an exception to this trend. In its editorials it did all it could to defeat Galen and lessen Carter's influence. The Miner accused Galen of refusing to accept Tolan's challenge to debate. Thus, the Miner argued that Galen and other G.O.P. candidates admitted that they "are either inferiors of their opponents on the Democratic ticket, or that their cause cannot be openly defended."<sup>40</sup> The Miner also attempted to link Galen with the favoritism

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<sup>37</sup>Great Falls Tribune, October 22, 1908.

<sup>38</sup>Missoulian, October 9, 1908.

<sup>39</sup>Hamilton Western News, September 30, 1908; Lewistown Fergus County Democrat, October 27, 1908.

<sup>40</sup>Butte Miner, October 23, 1908.



shown to certain companies in Montana. Later in the campaign an editorial argued that Carter had helped Standard Oil control the state by using the Land Board to advance its interests, and mentioned that the attorney general was a member of that Board.<sup>41</sup> Other Democratic papers criticized the Carter machine, and then added Tolan's remark that Galen was Carter's brother-in-law.<sup>42</sup>

The Republican papers, rather than attack Tolan, stressed Galen's record. The Missoulian carried Tolan's sarcastic remarks unedited, but its editorials necessarily were pro-Galen. Dixon's organ said Galen's "performance has been such as to entitle him to the unqualified support of the state."<sup>43</sup> The Billings Gazette and the Helena Herald both praised Galen in flowery editorials.<sup>44</sup>

On November 3, 1908, Galen defeated Tolan by almost four thousand votes. The Socialist candidate, C. M. Parr, garnered 5,289 votes, which resulted in Galen receiving less than 50 percent of the votes. However, Donlan, the Republican gubernatorial candidate, was defeated, and the Republicans lost their majority in the state house of representatives.<sup>45</sup> Hence the immediate effect of the 1908 election was the weakening

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<sup>41</sup>Ibid., November 1, 1908.

<sup>42</sup>Hamilton Western News, September 30, 1908; Great Falls Tribune, October 22, 1908.

<sup>43</sup>Missoulian, October 18, 1908.

<sup>44</sup>Helena Herald, October 23, 1908; Billings Gazette, October 17, 1908.

<sup>45</sup>Waldron, Atlas, pp. 122, 124.

of the power of the Carter machine, which would, in turn, be less useful for Galen.

The skill in political manipulation that Galen evidenced in his first term burgeoned in the next four years.

In a letter to Senator Carter he asked his brother-in-law for some of the "spoils" of government. He wrote:

If there is some way to let a man out of the civil service employment I believe it would be well to put C. J. Mackey on the list for decapitation, as he actively favored [Frank J.] Edwards in the last city election. It does not seem wise to give aid and comfort to the enemy when we have friends looking for assistance.<sup>46</sup>

Consequently, although Carter had been nominated as the man who "would not stoop to the spoils of office," he actually believed he was entitled to them.

Secondly, Galen was now faced with the realization that there would be a struggle between Congressman Joseph M. Dixon and Carter. Prior to the campaign of 1908, Carter and his associates had attempted to block Dixon's political progress, and their setbacks in the election would compel them to exert even greater effort against their major rival. Galen, whose place in the G.O.P. depended largely on the influence of Carter, would naturally do everything possible to discredit Dixon.

The Kennedy memorandum was an illustration of Galen's role in the struggle. J. M. Kennedy, a former Heinze man, was

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<sup>46</sup>Frank J. Edwards broke with the G.O.P. and became a Progressive. He returned to the party to defeat Galen for the G.O.P. gubernatorial nomination in 1916. Missoulian, August 27, 1916; A. J. Galen to T. H. Carter, April 16, 1910, Carter MSS.

now more friendly to Carter than to Dixon.<sup>47</sup> He was a fellow passenger of Dixon's on a Northern Pacific train after the election of 1908, when Dixon verbally assaulted Carter. Pressed by Galen, Kennedy, in an exaggerated and lengthy memorandum, related the conversation to Carter. The heated discussion arose over who had been loyal to the Republican cause in Montana and particularly to Donlan. Dixon had been in Chicago working with the Republican national committee in planning the western phases of the Taft campaign, and did not return to the state until just before the election. Kennedy contended that many Republicans were displeased over Dixon's inaction. But Dixon argued that Carter's support of Donlan had been feigned. Carter had supported Donlan for the nomination with the realization that he would be defeated in November. Then this defeat of a Catholic would mollify the anti-Carter voters, and help make it possible to elect a Catholic senator--Carter--in 1910. Dixon added: "Carter is pretty smooth . . . figures it out that the people of this State are not going to send all Catholics to office. It is about all they will stand to take care of Tom and brother-in-law Albert." He continued,

. . . Galen had a pretty hard row to hoe in this campaign. He knew Galen needed all the Irish and Catholic support he could get in this state, and the best way to strengthen Galen in places like Butte and Anaconda was to nominate a Catholic for Governor so that some of the Irish Catholic Democrats . . . could be

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<sup>47</sup> Helena Independent, May 2, 1920.

switched . . . . Carter figured that Donlan's candidacy was worth several hundred votes in Silver Bow county alone, to brother-in-law Albert.

The long conversation waxed and waned in its intensity. Finally, Dixon said: "I will make Mr. Carter regret the day that he turned traitor to me and sought to injure me without any provocation."<sup>48</sup> Since Dixon had discussed Galen in his philippic and had announced a vendetta against Carter, Galen surmised he would also be a target.

Thirdly, Galen's political double-talk came to light. Publicly, Galen said that there should not be a state printing contract monopoly. But privately, he was the legal adviser to the State Press Association, which had the monopoly. Moreover, Doctor O. M. Lanstrum of Helena, Carter's close friend and political ally, was the president of the association.<sup>49</sup>

Fourthly, Galen showed his political ties to the Amalgamated Copper Company and the railroads. Montana had long been plagued by partial tax assessments. The mining and railroad companies employed their own assessors and lobbied against the state's creating a tax commissioner. Thus, properties of mining and railroad interests often were either not assessed or

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<sup>48</sup>A. J. Galen to T. H. Carter, March 23, 1909; J. M. Kennedy statement, enclosure in A. J. Galen to T. H. Carter, March 23, 1909, Carter MSS.

<sup>49</sup>Jerre C. Murphy, Comical History of Montana (San Diego: E. L. Scofield, 1912), p. 85. Helena Montana Lookout, November 20, 1908.

were undervalued.<sup>50</sup>

In 1909, Montana had a constitutional provision which limited the rate of taxation on real and personal property. Section 9 of Article XII stated:

The rate of taxation of real and personal property for state purposes in any one year . . . shall not exceed two and one-half (2½) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million dollars (\$300,000,000), the rate shall never thereafter exceed one and one-half (1½) mills on each dollar of valuation.<sup>51</sup>

The assessed valuation in 1908 was approximately two hundred and forty-eight million dollars, and in 1909 it was two hundred and eighty million. Based on these figures it was estimated that in 1910 the assessed value would go over the three hundred million mark.<sup>52</sup> The legislature had passed an amendment in 1907 to increase the tax base, but the people had voted it down in 1908. In 1909, the legislature passed another amendment to increase the tax base to six hundred million, but it would not be voted on until November of 1910.<sup>53</sup>

The railroads, the Amalgamated, and Governor Norris immediately became alarmed. The legislature had based its

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<sup>50</sup>Murphy, Comical History of Montana, p. 246. Helena Independent, November 19, 1909.

<sup>51</sup>Montana Constitution (1889), art. XII, sec. 9.

<sup>52</sup><sub>3</sub> Att'y. Gen. Rep. 266 (1911).

<sup>53</sup>Ibid.; Waldron, Atlas, pp. 128, 133.

appropriations on the estimated funds that would be collected on the two and one-half mill levy. And now, if the levy was automatically reduced, careful scrutiny would have to be given to all land in the state in order to lessen the deficit. In addition, the governor was upset because expenditures would also have to be curtailed which, he felt, would result in a crisis.<sup>54</sup>

Galen came to the aid of Norris, The Company, and the railroads. In an opinion requested by the State Board of Examiners, of which he was a member, Galen declared that the reduced tax rate provision in the constitution "was not self-executing." He added that "the Constitution does not fix the amount of the levy, but simply says it shall not 'thereafter exceed' a certain amount . . . . The only authority under the Constitution which has a right to fix much levy is the legislative assembly . . . the legislature only meets once in two years." Thus he argued that the tax reduction provision would only be operable for a short period every two years. Galen concluded his opinion by suggesting that the taxpayers and the various state institutions present the issue to the courts to confirm or deny his construction.<sup>55</sup> But the suggestion was not his only contribution. Paradoxically he had his father-in-law Willard Bennett, who had extensive mining interests,

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<sup>54</sup>Murphy, Comical History of Montana, pp. 245-254; Helena Montana Lookout, October 15, 1910; Helena Independent, November 19, 1909.

<sup>55</sup>3 Att'y. Gen. Rep. 226-228 (1911).

seek an injunction to restrain state officials from levying the tax of two and one-half mills.<sup>56</sup>

Galen and Hall, the assistant attorney general, wrote a brief for the state, arguing what Galen had written in his opinion: that the tax reduction provision was not self-operable, and that the legislature was bound both by statute and the constitution to levy a tax which would be sufficient to meet the appropriations for the next two years. Thus, the rate could not be changed. Finally, only the legislature could decide tax matters.<sup>57</sup>

Moreover, Bennett's counsel was tied to the corporations. M. S. Gunn and Carl Rasch represented Bennett. Gunn was a former law partner of Carter, and had been president of the Montana Railroad. Gunn and Rasch were presently attorneys for the Milwaukee Railroad.<sup>58</sup>

Justice Theodore Brantly, a friend of the Carter family, delivered the opinion of the court, with Justices Henry C. Smith and William Holloway concurring. In agreement with Galen the court held for the state on Section 12, Article XII of the constitution, which provides that no appropriations shall be made nor any expenditure be authorized by the legislature, whereby the expenses of the state shall exceed the

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<sup>56</sup>State v. State Board of Examiners, 40 Mont. 59 (1909).

<sup>57</sup>3 Att'y. Gen. Rep. 226-228 (1911).

<sup>58</sup>Lewistown Fergus County Argus, May 15, 1906.

total amount of taxes. Justice Brantly went on to contend that the legislature was governed by Section 9--the portion which established the tax rate at two and one-half mills.<sup>59</sup> The opinion also implied that the legislature was without recourse, since it could only be called into special session for unforeseen emergencies, and the tax rate was a "regular" function.<sup>60</sup> He concluded that the tax reduction provision was not self-executing, because the legislature could not decide what would transpire in the interim.<sup>61</sup> Thus, "an undetermined tax is no tax."<sup>62</sup>

Thus, the attorney general and the court had argued, as strange as it may sound, that one-half of one section of the constitution was in operation only sixteen days in every two years. They also contended that state law superseded the constitution, and that Montana lacked a system of checks and balances because only the legislature could decide taxes. Moreover, no court could enforce the constitution, when it would be inconvenient to do so.

Press criticism of the case was almost nonexistent. Virtually all the papers in the major cities across the state

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<sup>59</sup>40 Mont. at 63.

<sup>60</sup>3 Att'y. Gen. Rep. 228 (1911).

<sup>61</sup>40 Mont. at 64-65.

<sup>62</sup>Id. at 64.



simply noted that the present taxes were valid.<sup>63</sup> The only objector was the Helena Independent, which argued that if the ruling was for the purpose of

safeguarding the interests of the railroads in Montana, we believe that they are egregiously mistaken . . . . If the State Board of Equalization will obey law as to the assessed valuation . . . at the legal rate of 1½ mills the total taxes of the railroads in Montana will not be greater than they are now.

It called the opinions of Galen and Brantly "foolish and unconstitutional."<sup>64</sup>

Presumably The Company and the railroads were more astute when it came to taxes than the editors of the Helena Independent, however. Hence one can assume that careful consideration had been given to the issue before it was raised.

The assumption that the mining and railroad companies were behind the case is well-founded. In the first place, they were the largest landowners in the state, and they were not assessed by a state officer. Thus, if programs had to be cut back, the people would probably demand an investigation to make sure that the lands of the large holders were assessed. Secondly, Galen arranged the test case by having his father-in-law contest his opinion. Bennett's attorneys were tied to the mining and railroad interests. Thus, Galen's opinion and his subsequent involvement demonstrated the corporate cloak which he would usually wear.

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<sup>63</sup>Missoulian, November 9, 13, 22, 1906; Billings Gazette, November 11, 23, 1906; Great Falls Tribune, November 9, 22, 1906.

<sup>64</sup>Helena Independent, November 19, 1906.

During Galen's second term the state was confronted with a scandal involving Samuel W. Langhorne, Jr., the clerk of the Stock Commission. The twenty-seven-year-old Langhorne was the son of Samuel W. Langhorne, Senior, a prominent Democratic mining and land lawyer.<sup>65</sup> C. K. Krumps, the State Examiner, in auditing the accounts of the Stock Commission's trust fund which Langhorne administered, found a deficit of ten to twenty thousand dollars. Also, the majority of the receipts and records for the last several years were missing. Langhorne, who had held the position of clerk for the last six years, was responsible for keeping records of all cattle in the state transported to slaughterhouses from within Montana. The policy of the state required the stock inspector at the slaughterhouse to send Langhorne a description of a steer when it was unbranded, or if the brand was not registered with the state. In turn, Langhorne's duty was to inform the stock inspector the name of the rightful owner. Then a check would be sent in care of Langhorne for him to distribute to the rightful owner. But since most of the owners of the stock could not be identified, the money was deposited in the state treasury.

The criminality arose because Langhorne used fictitious names and forged signatures for personal gain. The checks were in small amounts, twenty-five to one hundred and twenty-five dollars. Each check that was falsified was a criminal

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<sup>65</sup>Billings Gazette, December 27, 1910; Sanders, Progressive Men of Montana, p. 259.

act of both forgery and grand larceny. The total number of misappropriated checks was in the hundreds.<sup>66</sup>

Galen's involvement in the case occurred in a roundabout manner. Governor Norris informed Galen of the situation on December 24, 1910. Galen immediately took the case out of the hands of Sol Hepner, the Lewis and Clark County attorney. He explained that Hepner was leaving office the first of the year and that the county attorney-elect, Arthur P. Heywood, was Langhorne's attorney.<sup>67</sup> Galen's role was more of a defender than a prosecutor, however. Galen decided to have Langhorne make restitution to the state. Langhorne turned his bank account of \$2,800 and his house valued at \$5,200, which was half in his wife's name, over to the state. Then Galen consulted five prominent stockmen of the state: C. J. McNamara, B. D. Phillips, Sam Miller, and two loyal Carterites, John E. Edwards and Thomas A. Marlow. He said that they agreed with him that all charges against Langhorne should be dropped except one count of forgery.<sup>68</sup>

Galen had Langhorne charged in court before Judge James M. Clements, a long-time Democrat, and a man considered very close to The Company.<sup>69</sup> Galen argued with the judge for leniency, as there were mitigating circumstances. Langhorne

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<sup>66</sup>Billings Gazette, December 27, 1910; Missoulian, December 28, 1910; Helena Independent, December 27, 1910; Helena Record, December 26, 1910.

<sup>67</sup><sup>4</sup> Att'y. Gen. Rep. X (1913).

<sup>68</sup>Ibid. XI.

had made restitution to the state; he had an aged father and mother; he had married a Helena girl; and he had a thirteen-month-old child.<sup>70</sup>

The courtroom must have been a cross between a "soap opera" and a "Perry Mason" special, as the judge wept when he passed sentence--one year in prison, with eligibility for parole at the end of six months.<sup>71</sup> Langhorne was taken from the courthouse in a taxicab, and sent by railroad to Butte where he was allowed to spend the night. He then traveled to the state prison at Deer Lodge. Incidentally, while in Helena he was placed under house arrest rather than being taken to jail.<sup>72</sup>

So, in the course of three days, Galen had become aware of the crime, investigated, prosecuted, and sent Langhorne to prison.

The press carried the news of the scandal from its inception, and displayed mixed emotions. The Democratic Great Falls Tribune reported that Langhorne had "played the ponies," and was a heavy bettor. It asked how any attorney general could possibly prosecute a case before the extent of the operations became known.<sup>73</sup> The Republican Billings Gazette, without

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<sup>69</sup>Wheeler, Yankee From the West, p. 122.

<sup>70</sup>Great Falls Tribune, December 28, 1910.

<sup>71</sup>Ibid.; Helena Independent, December 29, 1910.

<sup>72</sup>Helena Independent, December 28, 1910.

<sup>73</sup>Great Falls Tribune, December 29, 1910.

drawing any conclusions, pointed out that Langhorne's father was well-known. Thus, the Gazette insinuated that because of the father's ties to the mining companies, the attorney general and the court had shown favoritism to the younger Langhorne.<sup>74</sup> The Montana Lookout, an outspoken Helena weekly, said that "Attorney General Galen is much better fitted to be a state agent of the Humane Society rather than the state prosecuting officer in the pursuit of justice."<sup>75</sup>

The manner in which the whole scandal was handled causes one to speculate. Langhorne's father was a prominent lawyer, as was Galen. Several years of the records were missing. The restitution to the state, even if young Langhorne were charged on the known accounts, did not come close to covering the amount embezzled. No one knew how much had been pilfered when Langhorne was charged or arraigned. The county attorney was eased out, and Galen assumed the prosecutor's position. The mitigating circumstances were farcical, as no leniency should have been allowed for marrying a Helena girl, having aged parents and an infant child, and making partial restitution to the state. Two members of the ad hoc committee were Carter's closest friends. The case was handled with extreme speed. Langhorne was not treated like a felon. The presumably impartial judge wept. Lastly, the elder Langhorne, Clements, and Galen all were loyalists to The Company, and as good

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<sup>74</sup>Billings Gazette, December 27, 1910.

<sup>75</sup>Helena Montana Lookout, December 31, 1910.

loyalists they readily took care of each other.

The analysis produces a question which is a conclusion. If Langhorne's father had not been a prominent lawyer who had served the mining companies, would Galen have taken the same action?

Although there was no constitutional limitation in 1912, Galen decided to refrain from being a candidate for re-election. Instead, at the Republican convention in Great Falls he supported W. J. Paul of Powell for the attorney generalship.<sup>76</sup>

Galen's decision to refrain from seeking a third term was wise. The Republicans were in disarray with the Progressives nominating a slate, while the Democrats were united.

As attorney general, Galen used his legal talents for The Company, the Republicans, and the state. After being derelict in his duty to give the State Board of Land Commissioners legal advice on proposed bonds, he tried to make the state institutions self-supporting by voiding these already issued bonds. After the Democrats spread unfavorable publicity, Galen required interest earned on state money to be accounted for, and while indicting the Republican treasurer, he incriminated Rice's Democratic predecessors. He saved The Company and the railroads from being required to pay their fair share of the taxes. He skillfully reduced the felonies of the son of a former Company lawyer to a punishment comparable to one misdemeanor. Thus Albert J. Galen, who arrived in the attorney

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<sup>76</sup>Helena Record, September 6, 1912.

generalship as an apprentice in politics, left office as an experienced professional.

Thus, Galen had in one leap gone from law school graduate to attorney general, bypassing the usual steps. He had learned political manipulations from Tom Carter, and he proved to be an outstanding pupil. The friends and enemies of Tom Carter also became his. Galen had solidified his ties to The Company and the railroads, and he in turn was loyal to those who were loyal to The Company. He was an astute lawyer, but his interests did not coincide with those of the people. At the completion of those eight years in office he had become a manipulator of people and the law, for himself, The Company, and the railroads. This was a role he would keep, nurture, and perhaps cherish for the remainder of his life.

### CHAPTER III

#### INTERIM, 1913-1920

Although Galen was no longer an officeholder, the next eight years profoundly influenced his political future. He suffered a major political defeat, and his record was scarred by a conviction on a charge of contempt of court for obstructing justice.

Galen's voluntary but politically expedient retirement was short-lived. In 1916, a superficial reunion of the erstwhile Progressives and the regular Republicans seemingly enhanced the value of the Republican nominations. As factions struggled for control of the G.O.P., the Carter machine entered John E. Edwards of Forsyth in the senatorial race and designated Galen as its gubernatorial candidate.<sup>1</sup>

Among Galen's more formidable opponents in the Republican primary were Frank J. Edwards, E. H. Cooney, Charles S. Henderson, and Walter B. Sands. Edwards, a former Progressive and a foe of the Carter legatees, was a five-term mayor of Helena. A native Montanan, he had also operated and owned a successful mercantile business in the capital city.<sup>2</sup> E. H. Cooney was the editor of the Republican Great Falls Leader.

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<sup>1</sup>Helena Record-Herald, July 4, 1916.

<sup>2</sup>Billings Gazette, August 16, 1916.



He had served one term in the state house of representatives from Cascade County, and had been a postmaster in Great Falls.<sup>3</sup> Charles S. Henderson was an ex-sheriff from Silver Bow County whom Galen detested. In 1910, Galen had privately voiced to Carter his opposition to Carter's nomination of the Butte Republican for the federal marshalship.<sup>4</sup> Lastly, Walter B. Sands, a Chinook lawyer, was a reformer who advocated a higher mine tax.<sup>5</sup>

Each of the candidates participated in his own speech-making tour across the state. Although each one had his own platform, they all professed the age-old rhetoric of economy in government, fair and lower taxes, law enforcement, and better working conditions for the laborer and the farmer.<sup>6</sup>

In addition to the standard rhetoric, each candidate made an effort to obtain votes by stressing what he had accomplished. Galen emphasized his record as attorney general. He claimed that he had forced the state treasurer to account for interest on public funds, that he had prevented the dissipation of the land grants, and that he had enforced the stock

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<sup>3</sup>Great Falls Tribune, August 26, 1916; Missoulian, July 15, 1916; Big Timber Pioneer, July 26, 1916.

<sup>4</sup>Forsyth Times-Journal, August 31, 1916. A. J. Galen to T. H. Carter, December 10, 1910; T. H. Carter to A. J. Galen, January 5, 1911, Carter MSS.

<sup>5</sup>Big Timber Pioneer, July 20, 1916; Chinook Opinion, July 13, 1916.

<sup>6</sup>Anaconda Standard, August 27, 1916; Forsyth Times-Journal, August 3, 1916; Missoulian, August 28, 1916.

industry regulations.<sup>7</sup> Cooney urged the creation of a board with the power to equalize taxes. He also dwelled upon his awareness of issues due to his newspaper background.<sup>8</sup> Henderson asserted that he was the best candidate because he had quelled labor rioting while he was sheriff in Silver Bow.<sup>9</sup> Edwards believed that his gubernatorial potential had been demonstrated by his five victories in mayoralty races in Helena.<sup>10</sup> Lastly, Sands claimed he more adequately represented the interests of the people because he was from a small town, and most of Montana was composed of small towns.<sup>11</sup>

Immediately before the election it was rumored in Silver Bow that Galen was throwing the election to Henderson in order to defeat Edwards. Galen called it "an eleventh hour canard to hurt him."<sup>12</sup>

On August 29, 1916, Frank J. Edwards became the Republican nominee for governor. Edwards captured 13,933 votes, followed by Cooney with 10,425, Galen with 9,554, Henderson with 6,014, and Sands with 4,659. Galen led in only four counties--Broadwater, Madison, Mineral, and Powell--and he lost to Edwards in their hometown of Helena. Sam V. Stewart,

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<sup>7</sup>Anaconda Standard, August 27, 1916.

<sup>8</sup>Billings Gazette, August 16, 1916; Missoulian, August 15, 1916.

<sup>9</sup>Forsyth Times-Journal, August 3, 1916.

<sup>10</sup>Billings Gazette, August 16, 1916.

<sup>11</sup>Helena Independent, August 27, 1916.

<sup>12</sup>Anaconda Standard, August 27, 1916.

who easily outdistanced Miles Romney for the Democratic nomination, defeated Edwards in November by almost ten thousand votes. (John E. Edwards failed to gain the senatorial nomination.)<sup>13</sup>

The defeats of Galen and John E. Edwards symbolized the decline of the Carter machine. The Democratic Helena Independent attributed the victory of Frank Edwards to the support he received from the Bull Moosers. It also described the primary as a Waterloo for the old guard of the Republican party.<sup>14</sup> The ballots also indicated that the Progressives had gained a temporary advantage in the struggle to direct the reorganization of the party. But, of course, political currents could easily shift.

However, Galen's defeat did not remove him from public life and the political scene. The following year he teamed with Dan M. Kelly, another former attorney general, as counsel for two Democrats, William Rae and A. M. Alderson, who were defendants in the Northwestern Trustee case. Rae was state treasurer, and Alderson was secretary of state.<sup>15</sup>

The Northwestern Trustee Company had been organized to build large-scale housing in Montana, and to lend money to farmers at low rates of interest. The company had sold stock at inflated prices. These certificates contained the pictures

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<sup>13</sup>For the complete statistics, see Montana Secretary of State "Report of the Official Canvass of the Primary Election," August 29, 1916, Office of the Secretary of State, Helena, Montana.

<sup>14</sup>Helena Independent, August 30, 31, 1916.

<sup>15</sup>Ibid., January 16, 1917.

of Governor Stewart, and J. W. Speer, a prominent Great Falls businessman and ex-mayor. Neither Stewart nor Speer owned any stock in the company. In addition, although Rae and Alderson were advertised as the major stockholders in the company, each owned only one paid share. Rae, Alderson, and Speer were organizers of the company, along with D. G. Bertoglio, a Democratic businessman from Butte. The company had hired two newly arrived Montana residents, Robert Sidebotham and J. G. Wilmot, as promoters.<sup>16</sup>

The legal problems of the Northwestern Trustee Company began in 1916, when a federal postal inspector brought the case to the attention of Burton K. Wheeler, United States District Attorney. The inspector contended that the company was using the mails to defraud the public. Wheeler, a political opponent of Galen, later asserted that he was "pressured" to refrain from prosecution, since so many prominent Democrats were involved. He also said that Rae, a close friend, had asked to be excluded from the indictment. Upon Wheeler's refusal, Rae urged the United States Attorney General, Thomas W. Gregory, to stop the prosecution. But Gregory left the decision up to Wheeler. After a grand jury investigation, the organizers, promoters and several employees of the Northwestern Trustee Company were indicted in July of 1916. They were charged with attempting to defraud the mails. The trial began in January of 1917 in Helena. Wheeler said

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<sup>16</sup> Ibid.; Missouliau, January 18, 1917; Great Falls Tribune, January 16, 1917.

that he requested an early trial, but it was delayed until after the fall election.<sup>17</sup>

The trial received front-page publicity across the state due to the prominence of the defendants and of the legal talent involved. In addition to Galen and Kelly, E. B. Lamb of Butte, former Judge Henry C. Smith of Helena, Wellington Rankin, a brother of Congresswoman Jeannette Rankin, and Colonel C. B. Nolan, T. J. Walsh's law partner, were the more prominent counsel for the accused.<sup>18</sup>

The trial was marked with political overtones. Kelly accused Wheeler of bringing the suit against Alderson and Rae for "political assassination."<sup>19</sup> However, Wheeler said he had no reason to wish them harm since both had supported him in his bid for the nomination for attorney general in 1912 against Dan Kelly at the Democratic convention.<sup>20</sup> Galen was fined fifty dollars for objecting to Judge Bourquin's overruling him. The fine was later suspended.<sup>21</sup> And lastly, Louis Haven, an attorney from Butte and a friend of Wheeler, had been given stock in the company to promote it. However, Haven, who broke with the defendants, was never indicted. As

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<sup>17</sup>Helena Independent, January 16, 1917. Wheeler, Yankee From the West, p. 110. Letter, Burton K. Wheeler to Rosalyn Oreskovich, April 7, 1972.

<sup>18</sup>Helena Independent, January 16, 1917; Great Falls Tribune, January 17, 1917.

<sup>19</sup>Helena Independent, January 26, 1917.

<sup>20</sup>Letter, Burton K. Wheeler to Rosalyn Oreskovich, April 7, 1972; Wheeler, Yankee From the West, p. 110.

<sup>21</sup>Helena Independent, January 17, 1917.

a result, Wheeler was accused of favoritism.<sup>22</sup>

The behavior of certain members of the jury was unconstitutional, to put it mildly. Wheeler claimed that one evening while the trial was in progress, he was with Wellington Rankin in the Placer Hotel, and they saw Dan Kelly buy a drink for one of the jurors.<sup>23</sup> The following day Wheeler asked Judge Bourquin to lock up the jury. He told the judge that the defendants were prominent politicians who spent considerable time drinking in Helena bars. Bourquin refused Wheeler's request, however. Then, approaching Kelly's impropriety in another manner, Wheeler cautioned the jury about their duty to refrain from discussing the case with anyone.<sup>24</sup>

Before the jury began its deliberations, Judge Bourquin instructed its members to return a verdict of guilty against all the defendants. But the jury found guilty only the promoters, Sidebotham and Wilmot, who were not well-established Montanans. In Wheeler's words, "Judge Bourquin was enraged," and ordered Wheeler to cite the offending attorneys for contempt of court for buying drinks for jurors. Wheeler said that he objected to Judge Bourquin's order, as the judge had refused to lock up the jurors during the trial. Wheeler also felt that he would look like a poor loser, since he would be

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<sup>22</sup>Helena Independent, January 16, 26, 1917.

<sup>23</sup>Wheeler, Yankee From the West, p. 113. In Re. Kelly, 243 Fed. 698 (1917).

<sup>24</sup>Helena Independent, January 16, 1917. Letter, Burton K. Wheeler to Rosalyn Oreskovich, April 7, 1972.

citing the winning attorney for contempt of court.<sup>25</sup> However, in February of 1917, Galen and Dan Kelly were charged with contempt for obstructing the administration of justice by "improperly influencing the jury."<sup>26</sup>

Glancing at the list of attorneys defending Galen and Kelly, one could have assumed that Montana's major corporations were on trial instead of the defendants. Galen and Kelly were represented by L. O. Evans, a powerful A.C.M. lawyer, Frank Walker, a distant relative of Galen, who was also a Company lawyer, W. T. Pigott, a former law partner of Carter, F. W. Mettler, Galen's law partner, E. G. Toomey of Helena, and Charles Donnelly of the Northern Pacific Railway Company. Incidentally, Walker would later serve as Postmaster General under Franklin D. Roosevelt, and Democratic national chairman.<sup>27</sup>

Galen and Kelly were charged with contempt for visiting and talking with the jurors for the purpose of improperly influencing them. The prosecution's case rested on testimony that Galen and Kelly drank and conversed with jurors and even promised them favors.<sup>28</sup>

Witnesses called to substantiate the charges affecting Dan Kelly included Wellington Rankin, attorney for the two

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<sup>25</sup>Sidebotham v. United States, 253 Fed. 417, 418 (1917). Helena Independent, February 2, 1917.

<sup>26</sup>In Re. Kelly, 243 Fed. 696 (1917).

<sup>27</sup>Id. at 696.

<sup>28</sup>Ibid.

convicted defendants, H. G. Murphy, an assistant attorney general, E. W. Byrn, a special agent for the Department of Justice from Butte, Charles E. Brown of Jefferson, and W. E. Warner of Deer Lodge, who had been jurors in the Northwestern Trustee case.<sup>29</sup> Rankin and Murphy verified Wheeler's comment to Judge Bourquin that Kelly had been buying drinks for Brown, as they conversed convivially at the Placer Hotel bar.<sup>30</sup> Byrn testified that he had heard Warner and Dan Kelly discuss legislation.<sup>31</sup> Brown admitted that he had had a few drinks with Kelly, but added that they were old friends. He also said that a drink would not influence his judgment. However, since Wheeler had objected to his presence he had left to avoid any conflict.<sup>32</sup>

Warner said he had not known either Galen or Kelly before the trial. But, since they were former attorneys general, he had sought them out in the hope that they would introduce him to legislators so that he would lobby for a railroad bill in which he was interested. Warner also said that he had talked with Kelly on two different evenings. Kelly first "put him off," but then Kelly told him he would discuss it after the trial.<sup>33</sup>

In his defense, Kelly admitted that he had had a drink

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<sup>29</sup>Id. at 696-705.

<sup>30</sup>Id. at 697.

<sup>31</sup>Id. at 700.

<sup>32</sup>Id. at 696.

<sup>33</sup>Id. at 699.



with Brown. However, he claimed that they had been friends for over ten years, and they had often imbibed together. He said that, when he had heard Wheeler mention to Galen the impropriety of their drinking at the bar that night, he had assured them that Brown was a high-class citizen. He said that at no time had they discussed the case. He also said that he had not given Brown "any special invitation to drink," but rather that Brown had been routinely included in the party. Kelly agreed with Warner that he had told him to wait until after the trial to discuss his proposed legislation.<sup>34</sup>

Witnesses testifying for the prosecution against Galen included Byrn, Haven, Warner, and Joseph Kirschwing. Kirschwing, a Democrat and a good friend of Wheeler's, had served one term in the state house of representatives from Cascade County. Byrn said he had seen Kelly, Galen, and Warner together, and he had seen Warner pass Galen a document to inspect.<sup>35</sup> Haven testified that he had seen Galen and Warner conversing in the hall after a court session.<sup>36</sup> Kirschwing also testified that he had seen them talking in the hall, and that Galen had had his arm around Warner's shoulder. However, his testimony was probably sympathetic to Wheeler, since he prefaced it with the comments that he knew what

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<sup>34</sup>Id. at 698-699.

<sup>35</sup>Id. at 696.

<sup>36</sup>Id. at 698.

Wheeler "was up against" and "the lobby that was working" for the defendants in the Northwestern Trustee case.<sup>37</sup>

Warner admitted that he had had two conversations with Galen. One had concerned railroad legislation. In the other, Warner had asked Galen for the name of a railroad man in the legislature. Galen had cited Charles Searles of Mineral County.<sup>38</sup> Warner said that there had been no ulterior motives in his actions, and that after warnings from Galen, he had discontinued talking to the attorneys in the case.<sup>39</sup> It was also intimated but not proved that Warner, upon Galen's advice, had been coached by Frank Mettler, Galen's law partner, about his testimony.<sup>40</sup>

Galen took the stand in his own defense. He testified that Warner had spoken to him four or five times during the trial. He said Warner had approached him concerning his proposed railroad bill, and that he had told Warner "I haven't got time to fool around with that." At a later time he had told Warner "for Christ's sake wait until the trial is over."<sup>41</sup> Galen substantiated the remainder of Warner's testimony.<sup>42</sup>

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<sup>37</sup>Id. at 700. Billings Gazette, July 23, 1916; Waldron, Atlas, p. 167.

<sup>38</sup>243 Fed. at 699.

<sup>39</sup>Helena Independent, February 8, 1917.

<sup>40</sup>243 Fed. at 698, 699.

<sup>41</sup>243 Fed. at 700.

<sup>42</sup>Helena Record-Herald, February 8, 1917.

Before the final day of the trial, six witnesses had attempted to disprove Kirschwing's testimony.<sup>43</sup> But Galen decided to test the credibility of Kirschwing's testimony without the aid of a court. The newspapers reported that when Galen and Kirschwing met in front of the Sheehan cigar store in Helena, Galen said, "'Kirschwing; you are a liar!'" Kirschwing issued a challenge--"'I don't allow anybody to say that to me and get away with it. You come right into the alley and prove it.'" Galen accepted the challenge, and the men went into a nearby alley. After Kirschwing struck Galen, Galen countered with a smash that knocked Kirschwing down. After Kirschwing got back on his feet, Galen wrestled him to the ground, then sat on him and repeatedly slapped his face. A bystander said to Kirschwing: "You've got all that is coming to you. If you have enough say so and we will stop this." Kirschwing cried, "'Enough,'" and the men were separated. Kirschwing and Galen were about the same size but, as the Great Falls Tribune said, "Galen is of an athletic build." Thus Kirschwing probably was not a suitable opponent for Galen. Many people felt that battle was the highlight of the trial.<sup>44</sup> Thus, the incident demonstrated Galen had a hot temper, tremendous strength, and a willingness to take the law into his own hands. It also showed that the climate of Helena was heated and tense, due to the political nature of both cases and the men involved.

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<sup>43</sup>243 Fed. at 700.

dependent, February 9, 1917; Great Falls Trib-  
une, 1917; Missoulian, February 9, 1917.

Kirschwing was not the only person connected with the trial to whom Galen desired to mete out impromptu justice. His grandson relates the story that, after his fight with Kirschwing, "he headed down the street whereupon he ran into B. K. Wheeler and he suggested to Wheeler that if he would drop his official capacity for a few minutes that he would handle him in the same manner that he had Kirschwing. Wheeler threatened that if he did he would get him for contempt of court for that, too."<sup>45</sup> Wheeler relates in his memoirs that "Afterward, every time Galen got drunk, which was quite often, he went up and down the streets of Helena cursing him."<sup>46</sup>

However, since Judge Bourquin was sitting alone on the case, neither Galen nor Kelly could appeal to the emotions of a jury. Bourquin found Kelly and Galen guilty of contempt of court for obstructing the administration of justice. Galen was also found guilty of contempt for having "intentionally and knowingly visited and conversed with Juror Warner." Kelly was found guilty of contempt for conversing with and buying liquor for two jurors.<sup>47</sup> Bourquin fined each defendant five hundred dollars, and lectured them on their responsibilities to the court.<sup>48</sup>

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<sup>45</sup>Albert J. Galen (grandson) to Rosalyn Oreskovich, June, 1972.

<sup>46</sup>Wheeler, Yankee From the West, p. 113.

<sup>47</sup>243 Fed. at 701.

<sup>48</sup>Id. at 702-705.

Both Galen and Kelly were dissatisfied with the verdict, and appealed Judge Bourquin's decision to the Circuit Court of Appeals, which upheld it. Circuit Court Judge William B. Gilbert pointed out that Galen and Kelly had a responsibility to refrain from unduly influencing the jury--"no exchange of favors and no personal or social intercourse between the parties, litigant or their attorneys."<sup>49</sup> Also unwilling to accept this decision, Galen applied to the United States Supreme Court for a writ of certiorari, but it was denied.<sup>50</sup>

The case and its related events symbolized the interplay of personalities and politics that is so characteristic of so-called legal systems. The trials revealed much about Galen. They emphasized his willingness to mix law and politics, and his inability to accept defeat. The Kirschwing and Wheeler incidents portrayed his vigilante sense of justice. Moreover, he had been a recognized member of The Company's legal team, a position which he would solidify to a greater degree with each passing year.

Galen took a leave of absence from his law firm for the next three years and became involved with the military. He acquired a new position in 1917, when he became chairman of the district draft board.<sup>51</sup> The following year Galen volunteered for the army. He was initially sent to Camp Fremont,

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<sup>49</sup>Kelly v. United States, 298 Fed. 947 (1918).

<sup>50</sup>Galen v. U. S., 298 U. S. 585 (1919).

<sup>51</sup>Helena Record-Herald, August 13, 1920.

California, and was assigned the rank of Command Major. In August of 1918, he was transferred to the Judge Advocate General's department in Siberia, where he remained for the duration of his service. While in Siberia he was promoted to Lieutenant Colonel. He was honorably discharged July 25, 1919. For his service, Galen was awarded the Distinguished Service Medal; and the Japanese government conferred the Order of Treasury Medal upon him.<sup>52</sup>

Galen was home from the service for less than a year when he sought political office. In 1920 he filed for an associate justiceship on the state supreme court; two judges would be chosen in November. Galen's opponents in the Republican primary included William L. Holloway, Frank Arnold, Frank W. Haskins, John Hurly, and Jess H. Stevens.<sup>53</sup> Holloway, a Michigan Law School graduate, had served on the court for eighteen years. Prior to that time, Holloway had been Gallatin County attorney. Haskins of Butte, the nephew of former United States Senator Lee Mantle, was a referee in bankruptcy. Hurly of Glasgow was a district judge of Roosevelt County. Arnold of Livingston and Stevens of Kalispell were new to politics.<sup>54</sup>

There was little news coverage of the campaigns for the judicial posts, since as usual they were overshadowed by the

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<sup>52</sup> Helena Record-Herald, January 16, 1923. 106 Mont. at XVII.

<sup>53</sup> Waldron, Atlas, p. 175.

<sup>54</sup> Helena Record-Herald, August 13, 1920.

presidential, gubernatorial and congressional contests. The few articles that mentioned Galen's campaign revealed that he was stressing what he felt he had accomplished as attorney general. He said that he had been impartial and that he was not tied to any interest.<sup>55</sup> He also pointed out that he was a rancher, in addition to being a lawyer, and thus was a well-rounded candidate.<sup>56</sup> He received publicity for helping frame the constitution of the American Legion.<sup>57</sup>

Holloway and Galen won the Republican nominations. Holloway edged Galen by forty-five votes--18,097 to 18,042. John Hurly finished third with 15,067 votes, followed by Stevens with 14,450.<sup>58</sup> The Democratic nominees were W. W. Palmer and Harlow Pease. Palmer and Pease were also the candidates of the Nonpartisan League, which had temporarily gained control of the Democratic party.<sup>59</sup>

In November, Holloway and Galen easily defeated Palmer and Pease.<sup>60</sup> Holloway outdistanced Galen by almost 2,500 votes. Galen trailed Holloway in his home county of Lewis and Clark by six hundred votes. Galen and Holloway were part of an overall national Republican landslide which was intensified in Montana by the conquest of the Democratic party by

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<sup>55</sup>Ibid.

<sup>56</sup>Forsyth Times-Journal, October 21, 1920.

<sup>57</sup>Helena Record-Herald, August 15, 1920.

<sup>58</sup>Waldron, Atlas, p. 175.

<sup>59</sup>Ibid. Great Falls Tribune, January 28, 1920.

<sup>60</sup>Waldron, Atlas, p. 183.

the Nonpartisan League in the August primary.<sup>61</sup>

Thus, from 1913 until 1920, Galen's career had been strikingly uneven. First, he had been soundly defeated in his bid for the Republican gubernatorial nomination in 1916, which reflected the deterioration of the once effective Carter machine. Then the following year he had been convicted of obstructing justice, which blemished his record. Yet despite these two setbacks he was returned to public office in 1920. His survival in the primary indicated that the voters had either forgotten or were unconcerned about his conviction. But his victory in the general election probably owed less to his popularity than it did to the combination of a spreading Republican wave nationally and bitter dissension in the ranks of Montana Democrats.

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<sup>61</sup>Ibid.



## CHAPTER IV

### ASSOCIATE JUSTICE, 1921-1933

The common belief, fictitious though it may be, is that a judge usually interprets the law fairly and without prejudice. The public fails to acknowledge that a judge is governed and limited by his experiences, his moral and political beliefs, avowed or unconscious, and his prejudices. Thus a judge can only interpret the law in terms of the language he has been taught. Albert J. Galen, who had beliefs and biases which remained constant throughout his life, epitomized these realities as a judge.

Galen became an associate justice of the Montana Supreme Court on January 3, 1921, a position he would hold for the next twelve years.<sup>1</sup>

The supreme court was entirely Republican, but each judge represented a faction within the party. Chief Justice Theodore Brantly leaned toward the Carter legatees. A former foreign language instructor in several colleges, Brantly had served as a district court judge at Deer Lodge.<sup>2</sup> William L. Holloway, a veteran jurist and a former Gallatin County attorney and district court judge, was a Dixonite and anti-

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<sup>1</sup>50 Mont. XX (1921).

<sup>2</sup>Tom Stout, Montana: Its Story and Biography, p. 436.

Company.<sup>3</sup> Charles S. Cooper, the English-born father of the famed movie star Gary Cooper, had been elected to the court in 1918 by the anti-Company Nonpartisan League. Although he had never been a practicing attorney, he had worked extensively in the legal system as a court reporter.<sup>4</sup> Frank B. Reynolds, a native of Michigan, belonged to the anti-Galen wing of the Billings Republicans. Although Reynolds had never held public office in Montana, he had been a probate judge in Branch County, Michigan.<sup>5</sup> These five men composed the bench for only two years. In 1922, the court acquired L. L. Callaway as chief justice and Albert P. Stark as an associate justice. Both men were also Republicans. Callaway, who replaced Brantly, had been Republican county chairman in Madison County in 1903. He had also served as a judge of the fifth judicial district in 1910. Callaway, who had defeated an alleged Company man, Democrat Joseph R. Jackson, for chief justice, was not a member of any faction of the party. Stark, who replaced Reynolds, was from Livingston, and was a newcomer to state politics.<sup>6</sup> In 1924, John A. Matthews, a Democrat, was elected to the first of his two six-year terms, when he outdistanced three opponents by 1,500

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<sup>3</sup> Ibid., p. 511.

<sup>4</sup> Wheeler, Yankee From the West, pp. 135-136, 170.

<sup>5</sup> Stout, Montana: Its Story and Biography, p. 219. Terry Tribune, July 2, 1920.

<sup>6</sup> Waldron, Atlas, p. 193. L. L. Callaway to Joseph M. Dixon, January 7, 1910, Dixon MSS.

votes. In two previous races he had lost to Cooper by 2,500 votes in 1918, and to Stark by 700 votes in 1922.<sup>7</sup>

Then in 1926, the terms of Galen and Holloway expired but both became candidates for re-election. They easily survived primary contests against Frank P. Leiper, a district court judge from Glendive, and the politically obscure William E. Carroll. Interestingly enough, Galen's appeal to the party faithful was demonstrated by his 1,355 margin over Holloway.<sup>8</sup>

The general election pitted Galen and Holloway against the Democratic nominees, former United States Senator Henry L. Myers, now a struggling Billings attorney, and C. E. Comer, an eastern Montana district court judge. With neither senatorial seat at stake, this off-year election was desultory. But Galen traveled extensively with Congressman Scott Leavitt, and paid tribute to the Republican party. In turn, its organs praised him. For example, the Forsyth Times-Journal, once the property of the late John E. Edwards, described Galen as the "Rock of the Constitution."<sup>9</sup> More realistically, as will be seen, the Anti-Saloon League criticized Galen as a "wet" in a circular sent through the mails.<sup>10</sup> But Galen rejected this appellation at a Republican rally, and

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<sup>7</sup>Waldron, Atlas, pp. 172, 193, 208.

<sup>8</sup>Ibid., p. 211.

<sup>9</sup>Big Timber Pioneer, July 8, 1926; Forsyth Times-Journal, October 21, 28, 1926.

<sup>10</sup>Helena Independent, November 1, 1926.

said that the Anti-Saloon League was trying to corrupt the court with its propaganda. Furthermore, he said he was prepared at all times to follow the constitution and the law. In talking to reporters after the meeting he said: "I am surprised that any organization would have the arrogance to make an attack on the Supreme Court of this state."<sup>11</sup>

1926 being a Republican year, Galen and Holloway had little difficulty outdistancing their Democratic challengers. Since the hard core of the party faithful is not as significant a factor in a general election, Holloway led Galen by over eight thousand votes.<sup>12</sup>

The court was significantly altered in 1928 as Albert H. Angstman and Sam C. Ford, both Republicans, were elected. Angstman was a native of Minnesota. A graduate of the St. Paul College of Law, he moved to Helena in 1912. Angstman would serve on the court for twenty-eight years. Ford, an experienced politician, had served as first assistant United States District Attorney from 1908 to 1914, and as Montana attorney general from 1917 to 1921. The Kentuckian had practiced law in both Helena and Great Falls.<sup>13</sup>

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<sup>11</sup>Ibid.

<sup>12</sup>Waldron, Atlas, p. 216.

<sup>13</sup>143 Mont. XXVI-XXI (1963-64). Forsyth Times-Journal, May 19, 1933.

Galen's judicial opinions conveyed a pattern of thinking that reflected his prejudices. He was an avid dissenter in cases of statutory rape throughout both his terms. In State v. Richardson the defendant was convicted of repeatedly raping his fourteen-year-old adopted daughter. The defendant's wife claimed that the girl had admitted she had had sexual relations with other men. The wife had lived in California for seven months away from her husband and daughter. Not recognizing that a wife cannot testify against her husband, Galen argued that the trial judge should have allowed the girl to be cross-examined as to whether she had had sexual relations with other men. He claimed that doctor's testimony showed that her female organs were unusually developed, and that she did not have a hymen. Galen also emphasized that the girl claimed that she had been standing up when she was first raped at the age of ten, and that the act had not caused pain. To Galen these were reasons to question her veracity.<sup>14</sup> In quoting a California case Galen said: "There is no class of prosecution attended with so much danger, or which affords so ample an opportunity for free play of malice and private vengeance."<sup>15</sup> In his dissent in State v. Newman he argued that the defendant should not have been convicted of raping a sixteen-year-old girl even though they had had sexual relations, because he said that he wanted to marry her.

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<sup>14</sup>State v. Richardson, 63 Mont. 322, 336 (1922).

<sup>15</sup>Id. at 344.

The defendant admitted that he had not said he was willing to marry the girl until after his arrest. The defendant also claimed that they were married by common law, but his testimony revealed that he was not aware common-law marriage existed until he was informed by the attorney who was defending him. Galen ignored this testimony and asserted that, since the man's intentions were honorable, the supreme court should have reversed the defendant's conviction. Cooper concurred with Galen.<sup>16</sup> In State v. Russell, Galen dissented because the man had previously been convicted of another rape, and some jurors had served at both trials. He was concerned because the defendant's counsel did not object to the jurors. He also claimed that the girl's testimony was a crucial factor in securing the conviction.<sup>17</sup> In State v. Paddock the accused was convicted of raping his twelve-year-old daughter. The mother and sister of the defendant testified that the girl had said her mother had told her how to send her father to jail. The mother was estranged from the father, and the girl wanted to live with him in Minnesota. Galen argued the girl should have been cross-examined to see if she was telling the truth, although the jurors had already decided on the credibility of the witnesses. Thus Galen's arguments in rape cases formed a pattern. He insinuated that a virtuous girl could not be raped. As he called for reversals, his reasoning was

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<sup>16</sup>State v. Newman, 66 Mont. 322, 336 (1923).

<sup>17</sup>State v. Russell, 73 Mont. 240, 252 (1925).

usually flimsy. For example, he once contended that the man wished to marry the girl, therefore his actions should not be considered rape. Another time he pointed out that because the girl was developed physically she was probably promiscuous. In all his opinions, he disregarded the ages of the victims. Moreover, in appellate reviews of rape cases, Galen behaved as though he were a trial judge; he weighed the evidence "de novo," considering questions of fact rather than law in an effort to substantiate his opinions. Finally, when the evidence confirmed the guilt of the defendant, in a last effort to reverse the decision, Galen implied that the jury was partial.

Galen's dissents in the rape cases demonstrated that when he could not find a precedent on which to base his case, he would dwell upon individual rights. If one were to use today's language, he could be termed a male chauvinist, as the man could do no wrong, since the woman invited the rape.

Throughout the prohibition period Galen was termed a "wet." In the liquor cases which came before the court this characterization was conspicuously true. In State v. Neville, although the sheriff did not have a warrant, he detained and searched a citizen who was carrying a handbag with a two-gallon demijohn protruding from the top of it. The arrest occurred in the alley behind the Hotel Deer Lodge. The sheriff had been informed that the defendant was an employee of the hotel who was transporting liquor for his employer or a patron at a banquet. The majority opinion held that when a person was

carrying a handbag with a demijohn protruding, it was ample reason for the sheriff to ascertain its contents. Also, the prohibition statutes allowed the sheriff to seize the liquor and the container in which it was being transported. In a special concurring opinion Chief Justice Brantly said that to rule otherwise would deny an officer the right to make an arrest, and would prevent the enforcement of the prohibition law.<sup>18</sup> Galen's dissent was adamant. He quoted the Magna Charta to demonstrate the injustice of arrest upon suspicion. His dissent would not have shown his prejudice if he had stopped there, but he continued.

Under this decision every person who carries a container for liquids may be subjected to an invasion of personal rights and privileges--the messenger who flies from the dairy with the pasteurized product of the cow, in basket or bottle, to the infant in the nursery, as well as the druggist clerk who carries a demijohn or flask which cheers the expiring moments of the sick or aged on their hospital cots. My brothers at the bar had best discard their green bags and portfolios for fishnets, in order to avoid inquisitive constables attracted by a bulging bag, from mussing their papers while forcing an inspection.<sup>19</sup>

His argument limped, however, as was customary whenever he was emotionally involved. But the Helena Record-Herald came to aid of Galen, as it usually did when Galen was being criticized by someone other than a Republican, and praised him for his efforts to safeguard personal liberty.<sup>20</sup> However, both

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<sup>18</sup>State v. Paddock, 86 Mont. 569, 578 (1930); State v. Neville, 63 Mont. 50 (1922).

<sup>19</sup>63 Mont. at 69.

<sup>20</sup>Helena Record-Herald, September 9, 1922.



the Helena Record-Herald and Galen failed to mention that a demijohn was the standard container for illegal whiskey during the period.

Another liquor case was State v. Baracker. In a four to one decision, with Holloway writing for the majority, the defendant's guilt was upheld. The question before the court was whether an affidavit could be used as a basis to search a man's barn. Galen, who dissented, said that the ". . . principle involved is not whether the prohibition law should be upheld, but rather whether we shall scrap the Constitution." He vainly argued that the affidavit should not have been used, because it named the keg rather than the keg's contents as grounds for the search. After all, kegs were not banned.<sup>21</sup> Here again, Galen feebly twisted words to try to protect a bootlegger.

In addition to the social biases found in the rape and liquor cases, Galen cast himself as omniscient in homicide cases. In a series of murder cases with split decisions, Galen refused to accept circumstantial evidence in arriving at his rulings. To Galen, circumstantial evidence encompassed almost everything except a Galen-approved witness to the murder.

The first homicide case was State v. Riggs in 1921, which was a bizarre case with a tortuous legal history. The alleged crime took place at the home of the defendant in the

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<sup>21</sup>State v. Baracker, 75 Mont. 476, 483 to 493 (1926).

Huntley Reclamation Project near Billings. The defendant's wife had died in a fire in their house. The day prior to the fire the defendant was negotiating to purchase an adjoining farm, if he could secure a loan. His wife and his house were insured for one thousand dollars each. Riggs claimed to have smelled smoke, and then went downstairs to a room occupied by his wife. Afterwards he aroused their seven children, but did not summon his wife. The children, whose ages ranged from eighteen to three, also did not express any concern for their mother. The defendant went to the house of a neighbor and asked for help, but not specifically for his wife. A doctor testifying for the state asserted that he believed the woman died of suffocation while in an unconscious condition, caused by the use of chloroform or some form of violence. Doctors for the defense asserted that the state's doctor did not arrive at this conclusion until a month or so after the autopsy. At the time of the autopsy, he had said he could find no reason other than burning for her death. Two of the doctors testifying for the defense had previously been the state's witnesses.<sup>22</sup>

This was the second time the case had appeared in the supreme court. On the first appeal the case was sent back to the lower court and a new trial ordered on the ground that the evidence was insufficient.<sup>23</sup> The present appeal resulted

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<sup>22</sup>State v. Riggs, 61 Mont. 25 (1921).

<sup>23</sup>State v. Riggs, 56 Mont. 393 (1919).

in a three to two decision. Galen wrote the majority opinion. The majority opinion reversed the decision of the trial jury that the defendant was guilty of murder in the first degree. The majority opinion held that although the judge's instructions to the jury had been correct, they felt that the evidence did not warrant the verdict. Thus, they acted like a jury in weighing the evidence. The dissenters, Brantly and Reynolds, argued that if the supreme court were a jury they would have found the defendant not guilty. The function of the supreme court, however, was one of review, and that did not include weighing the evidence. After all, they did not have the benefit of hearing and seeing the witnesses, as the jury had.<sup>24</sup>

In the next two homicide cases Galen was in the minority. State v. Gunn was a brutal case. Frank Gunn sold liquor illegally in his roadhouse near Sweet Grass. During a loud argument Paul and O. J. Carney, who were with Ed Kasten, showered abuse upon Gunn. The sequel sent Gunn to the penitentiary. After the Carneys and Kasten left the roadhouse, the brothers, suffering from the ravages of intoxication, stalled their car. Gunn locked his establishment at one o'clock, setting a record for early closing. He and a girl then stopped at the stalled car. Although Justice Ford writing the majority opinion says that "the testimony is in hopeless conflict . . . ," he stressed that Gunn shot Paul Carney,

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<sup>24</sup>61 Mont. at 29.

pistol-whipped O. J., and then ran over his second victim with his automobile.<sup>25</sup>

This was the second appearance of the Gunn case before the court. On first appeal the justices sent the case back to the trial court, claiming that the evidence was insufficient to support the jury's verdict of first-degree murder. Now in response to Gunn's appeal from a similar sentence following another trial, the supreme court affirmed the guilt of the defendant, but reduced the crime to second degree murder.<sup>26</sup> Ford argued that the evidence did not establish murder in the first degree as there was an absence of deliberation and premeditation. However, the defendant admitted the killing of Paul Carney. Since jurors are the exclusive judges of the credibility of witnesses in the absence of inherent weaknesses in the testimony, Ford said that the supreme court could not substitute its judgment for that of the jury. Galen, joined by Angstman, dissented. They agreed that malice and premeditation did not exist, and argued that the physical evidence refuted the testimony of the state's witnesses. Galen did not mention the intent in the fired shot, nor the roadhouse's being closed so early. He also ignored the tire tracks. He argued that Bertha Erickson corroborated the defendant's version, and he disregarded other testimony to the contrary.<sup>27</sup> Thus, Galen once again

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<sup>25</sup>State v. Gunn, 89 Mont. 453 (1931).

<sup>26</sup>State v. Gunn, 85 Mont. 553 (1929).

<sup>27</sup>89 Mont. at 468.

ignored the jury.

The final homicide case was State v. LeDuc. The case arose from a violent death in a Butte rooming house, during a fight caused by a refusal of a tenant named Ostdiek to pay his rent, which was increased from one to five dollars a day. The purpose of the increase was to evict the tenant since he constantly had female visitors. LeDuc, the landlord and a former deputy sheriff, shot his antagonist, according to the latter's dying declaration. The defendant pleaded self-defense, of course, claiming that the deceased had fired first. The physical evidence concerning the discharge of the gun was inconclusive. The court split, three to two, with the majority upholding LeDuc's conviction on a charge of murder in the second degree. Angstman wrote the majority opinion. He argued that the dying declaration should be admitted into evidence as it met the requirement of the defendant's being aware of his impending death. To maintain his consistency, Angstman also distinguished it from the Gunn case. He said that in the current case there was a conflict in evidence, none of which was demonstrably false, so the validity of the evidence was a question for the jury. Finally, he argued that while the trial judge had erred in instructing the jury, it had disregarded the instructions so they did not affect the outcome of the trial. Callaway and Galen dissented. Callaway argued that the defendant did not know that he was going to die; therefore, the dying declaration should not have been admitted as evidence. Galen agreed with Callaway; he also

argued that the physical facts contradicted the statements of the witnesses.<sup>28</sup> He concluded his dissent by evaluating the judgment of the jurors. He quoted a ruling from Casey v. Northern Pacific Railroad Company, ". . . though the appearance of a witness is an aid in judging his credibility, it is not an infallible one. Dissimulation is often difficult to detect, and falsehood is often clothed in the garb of truth."<sup>29</sup>

The LeDuc case was not closed, however. With Matthews obviously having changed his views, the court again heard the case. This time a new majority of Galen, Callaway and Matthews ordered that LeDuc be granted a new trial. Justices Callaway and Matthews wrote opinions for the majority. Matthews now argued that the dying declaration should not have been admitted as evidence. He also asserted that the majority of the justices felt that the defendant had not had a fair trial. Angstman dissented, joined by Ford. Angstman argued that if the record presents no reversible error, the defendant did have a fair trial. He also pointed out that the majority of the justices still felt that there was no error in the instructions of the trial judge. He denounced Matthews for changing his mind, accusing him of uniting with Galen and Callaway when he actually believed in the judgment of the majority.<sup>30</sup> The rehearing demonstrated

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<sup>28</sup>State v. LeDuc, 89 Mont. 545, 577 (1931).

<sup>29</sup>Id. at 579.

Galen's unwillingness to give up. It should also be pointed out that Galen became a very close friend of Matthews, and would campaign for the Democrat in 1930.

Although Burton K. Wheeler accused Galen of ruling for the railroads in every railroad case which reached the supreme court,<sup>31</sup> Galen wrote only one opinion of this type which seems questionable. In Rau v. Northern Pacific Railroad, Galen, speaking for the majority in a three to two decision, contended that the plaintiff must prove he was not guilty of contributory negligence. But, as Ford and Angstman pointed out to Callaway, Matthews, and Galen, the burden of proof is the responsibility of the defendant, not the plaintiff, in cases involving contributory negligence. Galen's ruling was very favorable for the railroad, since the plaintiff, in effect, had to prove his innocence.<sup>32</sup> Thus, although Wheeler's criticism lacked abundant evidence to substantiate it, it was evident that when opportunity arose Galen would favor the railroads.

Galen's judicial propriety could be questioned in 1921. In the case of Mettler v. Ames Realty Galen disqualified himself from the case, but helped write the brief which Mettler argued orally.<sup>33</sup> Thus, Galen presented a case to the court of which he was a member. Although the court ruled against

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<sup>31</sup>Wheeler, Yankee From the West, p. 114.

<sup>32</sup>Rau v. Northern Pacific Railroad, 87 Mont. 521 (1930).

<sup>33</sup>Mettler v. Ames Realty, 61 Mont. 152 (1921).

Galen and Mettler, it is axiomatic that judges do not present cases in a court in which they hold a membership.

Galen's opinions sometimes stressed the rights of the individual. In Ingersoll v. Clapp Galen dissented. The plaintiff had been suspended from the University of Montana because her husband was described as the "campus bootlegger," and students drank in their home. Since it was also Mrs. Ingersoll's home, she was an accomplice before and after the fact, if the accusations were true. No evidence was offered that she drank, that he furnished liquor, or that Mrs. Ingersoll had been accorded a trial.<sup>34</sup> Thus, Galen's contentions that she was convicted by hearsay and that her rights as a citizen were unrecognized were valid.

In State v. Kuhr, in which the defendant used the mail to transport drugs, a postal inspector opened a package of drugs. He then called the sheriff, who arrested Kuhr for possessing drugs. The supreme court held that the evidence could be used to convict her, and refused to rule on the legality of the method of obtaining it. Galen dissented, arguing that evidence obtained illegally could not be used against a defendant.<sup>35</sup> Thus, Galen was again trying to protect constitutional rights which the other justices refused to recognize.

In some instances, Galen used a literal interpretation

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<sup>34</sup>Ingersoll v. Clapp, 81 Mont. 200 (1923).

<sup>35</sup>State v. Kuhr, 82 Mont. 515, 529 (1928).



of the constitution. For example, in State ex. rel. Mills v. Dixon et al. in 1922 Galen wrote the opinion for a unanimous court which struck down veterans' legislation. This statute would have granted each veteran ten dollars per month for every month in service up to a maximum of twenty months. The legislation was similar to that passed and upheld in Washington, California, and Wisconsin. Galen said the state had no legal obligation to pay. If any obligation existed, it rested with the federal government. He also said that Sec. 1, Article VIII, of the Montana Constitution prohibited any payment of bonuses. This section read: "Neither the state . . . shall ever give or loan its credit in aid of or make donation . . . to an individual, associate, or corporation."<sup>36</sup> With this interpretation, the court outlawed almost any kind of compensatory pay for services performed. Incidentally, this decision was expressly overruled in 1951.<sup>37</sup>

When Galen joined the judicial branch of Montana government, his political rival, Joseph M. Dixon, was elected governor. Dixon, a resident of Missoula and a non-practicing lawyer, was a former United States congressman and senator.<sup>38</sup> Galen had opposed Dixon since the era when Dixon and Carter had fought for power in the Republican party. Also, Galen had encouraged this rivalry with the forwarding of the Kennedy

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<sup>36</sup>State ex. rel. Mills v. Dixon et al., 66 Mont. 76, 83 (1922).

<sup>37</sup>Graham v. Board of Examiners, 125 Mont. 419, 438 (1951).

<sup>38</sup>Harlin, "Congressman Joseph M. Dixon and the Office, 1903: A Study in Political Patronage," on Montana and the Northwest in Honor of C. W. Smurr and K. Ross Toole, eds. (1961) 31-249.

memorandum in 1909. Thus, in 1919, when Dixon was an un-announced candidate for the governorship, Galen along with other Carter legatees had actively sought a candidate to oppose him.<sup>39</sup>

Unable to prevent Dixon's election, Galen and the other Carterites helped to thwart his program. Carterites and other Company men had been elected to the state senate in 1918 and 1920, and they had worked effectively at blocking many of Dixon's major proposals in the 1921 legislative session. Moreover, the supreme court would doom legislation which Dixon had managed to push through the legislature.

During Dixon's term Galen participated in three quasi-legal battles in which the governor was on the opposite side. The Conley case, the Tax Commission suit, and the Veto case were significant politically.

The first clash between the two men during Dixon's administration involved Frank Conley, a staunch Carterite and a long-time friend of the Galen family. He had been warden of the state prison for more than thirty years until Dixon replaced him in April, 1921, with M. L. Potter, a former sheriff of Carbon County.<sup>40</sup> Conley's major support had come from the Anaconda Company, since every time there was a major strike he would have the prisoners work for The Company.<sup>41</sup>

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<sup>39</sup>Miles City American, November 20, 1919.

<sup>40</sup>Great Falls Tribune, April 14, 1921.

<sup>41</sup>Helena Independent, September 30, 1921. Thomas H. Carter to Albert J. Galen, January 5, 1911, Carter MSS.

Dixon apparently dismissed Conley for two major reasons. First, the warden was an ally of the Anaconda Company and Dixon's other enemies. Secondly, Conley had accumulated over two hundred thousand dollars on a yearly salary ranging from three to five thousand dollars. The Company press chose to make the ouster a public issue. It attributed Dixon's action to personal politics, and claimed it was not in the best interests of the state. Thus, Dixon had to prove both his good faith and Conley's guilt, and he ordered an investigation.<sup>42</sup>

The investigation was conducted by T. H. MacDonald, a former Bull Mooser and a Dixonite from Kalispell. MacDonald, E. E. Stewart, the state accountant, and several assistants prepared a report which attested that Conley had misused and abused state property valued in excess of two hundred thousand dollars. Conley had used the prison's land and funds and inmate labor to produce food, and then in turn he had sold the food back to the prison. He had also sold the institution electricity and water from his companies, which were staffed by prisoners. Moreover, Conley had filed no financial records for the prison in the previous five years.

The release of MacDonald's report on November 28th created a furor. The Company-controlled press dismissed the report as a series of fabrications.<sup>43</sup> Then, the attorney general, Wellington D. Rankin, an aspirant for a United States

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<sup>42</sup>Anaconda Standard, April 14, 1921; Butte Miner, April 15, 1921; Helena Independent, April 20, 1921; Billings Gazette, April 16, 1921.

<sup>43</sup>Helena Independent, November 30, 1921; Great Falls Tribune, November 30, 1921.

Senate seat, filed suit in the district court of Lewis and Clark County demanding that Conley answer the allegations in MacDonald's report. However, no criminal charges were filed.<sup>44</sup>

Although the complaint was filed in January, 1922, the trial did not begin until April 12. The judge was A. J. Horsky, a Progressive leader in 1912, who heard the three-months-long case without a jury.<sup>45</sup> The state's witnesses included Potter, MacDonald, and several ex-convicts and inmates. Among Conley's witnesses were former governors and attorneys general, including Galen.<sup>46</sup> Galen's testimony contained a justification for every accusation by the state concerning Conley. Galen, who attended almost every day of the trial and conversed freely with Horsky,<sup>47</sup> said that Conley had carried out the orders, many of which were oral, of the prison board with complete dedication to the state. He also testified that Conley was merely an acquaintance and not a friend. Under cross-examination Rankin asked him if he had ever represented Conley. Galen replied in the negative. The attorney general then refreshed his memory, and cited a case in which he had. Galen agreed, but said that he had not really represented Conley, but rather his own brother, Jim, who was Conley's business partner. Galen also defended Conley's water

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<sup>44</sup>Helena Independent, January 20, 1922.

<sup>45</sup>Ibid., February 7, 1922.

<sup>46</sup>Stenographic Record of the trial of Frank Conley, April 12-July 11, 1921, Dixon MSS.

<sup>47</sup>Interview, J. A. Karlin with T. H. MacDonald, September 28, 1965.

company. He said that Conley had offered the lowest bid, so of course the state had bought water from him. Galen substantiated this statement by pointing out that his father-in-law, Willard Bennett, owned the competing waterworks in Deer Lodge, and that if any favors were to have been extended Bennett would have received them. Galen also poked at Dixon. When he was asked a question concerning the character and achievements of Conley, he said that the trial showed a lack of appreciation for the services of Frank Conley by the present administration.<sup>48</sup>

The other defense witnesses also excused the actions of Conley. Former governors E. L. Norris and Sam V. Stewart along with former attorney general Dan Kelly agreed that the orders given Conley were often oral.<sup>49</sup>

Shortly after the election of 1922 Horsky exonerated Conley on every count except a minor one. He reasoned that since state officials had authorized Conley's actions, it had no right to recover from him. Horsky also announced that ". . . every act of Conley and the former board members was in the best interest of the State of Montana."<sup>50</sup>

Galen's role in the Conley trial was significant. His friendship for Conley, his intense dislike for Dixon, and his loyalty to The Company had combined to make him a prominent

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<sup>48</sup>Stenographic Record of the trial of Frank Conley, Dixon MSS.

<sup>49</sup>Ibid.

<sup>50</sup>Helena Independent, November 28, 1922.

figure during the long months. A moral obtuseness had prevented his questioning the sources of Conley's wealth. Although judicial ethics should have compelled him to hold aloof, he not only testified in court but also supposedly attempted to influence Horsky.

The Tax Commission case, which reached the state supreme court in September of 1923, had its roots in Montana's notoriously inequitable system of taxation, which favored the A.C.M. and other large corporations. Before 1921 repeated attempts to reform the system had failed.<sup>51</sup>

Dixon's first message to the legislature recommended the creation of a tax commission to standardize and administer the collection of taxes throughout the state. Although the house readily approved Dixon's proposal both in the regular and special sessions of 1921, the senate was dominated by an anti-Dixon faction. Led by John E. Edwards, of Forsyth, a close friend of Carter and an ally of The Company, the senate twice rejected the tax commission.<sup>52</sup> Finally, by successful maneuvering, the Dixonites in the senate introduced a constitutional amendment creating a tax commission, which would be placed on the ballot in 1922. This tactic left the Carterites and others loyal to the companies which would be affected without a choice. Political considerations required that they allow the people to decide. In November of 1922, the voters

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<sup>51</sup>Murphy, Comical History of Montana, pp. 245-249.

<sup>52</sup>Montana Senate Journal, February 22, 1921 (1830), pp. 479-481.

approved the amendment by a margin of almost thirteen thousand votes.<sup>53</sup>

The initial actions of the Dixon appointees on the tax commission made the A.C.M. and the Montana Power Company unhappy. The A.C.M. was forced to pay twenty thousand dollars to compensate for mistakes in its 1918 tax statement. The Montana Power Company's assessments as well as its tax rate were increased.<sup>54</sup> Thus, the only feasible recourse of the corporations from the tax commission was to the court, since the people and the legislature had acted.

As a result, Charles H. Martien, the assessor of Lewis and Clark County, brought a suit. It was also rumored that Galen had participated in arranging the test case. Martien sought an injunction to keep the commission from continuing its work, based on the technicality that the text of the amendment had not been entered in full on the senate journal. Judge W. H. Poorman was disqualified, and Judge Joseph R. Jackson, of Butte, allegedly a Company man, approved the injunction. The attorney general then appealed to the state supreme court.<sup>55</sup>

Both parties to the suit had agreed that the question presented for adjudication was whether the legislature had

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<sup>53</sup>Montana Senate Journal (1921), p. 779; Montana House Journal (1921), pp. 1017-18; Waldron, Atlas, p. 194.

<sup>54</sup>Joseph M. Dixon to Charles R. Swift, August 6, 1923, Dixon MSS. Great Falls Tribune, August 9, 1923.

<sup>55</sup>Helena Record-Herald, August 3, 1923; Great Falls Tribune, August 8, 9, 1923. Joseph M. Dixon to Charles H. Swift, August 6, 1923, Dixon MSS.

complied with Section 9, Article XIV of the Montana Constitution. It reads: "Amendments . . . together with the ayes and nays of each house therein, shall be entered in full on their respective journal." The amendment had been entered on the house, but not the senate, journal.<sup>56</sup>

Wellington D. Rankin, the Montana attorney general, submitted the brief for the state. He argued that the journals of both houses were merely evidentiary records and indexes of the routine of introduction, report, and adoption. They were not the essential factors to be considered in amending the constitution. He relied heavily on precedents from other states. He also distinguished the Durfee v. Harper case on which the Martien suit was based by pointing out that whether the entry must be full or not was not the issue ruled on in that case.<sup>57</sup> He said, "The question was not a part of the case pending before the Court, was not essential or necessary to the decision, and was not an issue in the case. . . . therefore [it] amounts to nothing more or less than a personal, not a judicial, opinion of the members of the court." He also argued that State ex. rel. Hay v. Anderson overruled that decision.<sup>58</sup>

C. A. Spaulding, the attorney for Martien, argued that Durfee v. Harper had unequivocally decided that the entry had

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<sup>56</sup>Montana Constitution (1889), art. XIX, sec. 9.

<sup>57</sup>Durfee v. Harper, 22 Mont. 354 (1899).

<sup>58</sup>Martien v. Porter et al., 68 Mont. 450, 456-57 (1923).



to be in full. He dismissed the Hay case by contending that it required substantial compliance, and that in the present case there was not even an attempt to comply. He also argued that, if the court were to say Durfee v. Harper was dictum, it would be unjust, since he believed the statements made were necessary for the decision.<sup>59</sup>

In a three to two decision the court upheld the amendment. Stark wrote the majority opinion, with Callaway and Holloway concurring. Cooper and Galen each wrote separate dissenting opinions.<sup>60</sup>

Justice Stark based the majority opinion on the contention that the burden of proof lay with the party who sought to have the act declared unconstitutional. He said that the purpose of the amending procedure in the constitution was to "provide a plain, simple, and easily executed method of amending."<sup>61</sup> Thus, the Montana Constitution was not designed to make fundamental law incapable of change, as Martien was essentially arguing, but to make it simple so as to respond to the people's wishes. Stark distinguished Durfee v. Harper from the present case, because in Harper the amendment was not entered on either legislative journal, nor did the amendment refer correctly to the section of the constitution which it sought to amend. Furthermore, Stark held that State ex. rel. Hay v. Anderson had been the doctrine of the court since

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<sup>59</sup>68 Mont. at 461.

<sup>60</sup>Id. at 450.

1914, and he saw no reason to change it. The court agreed with Rankin that there was substantial compliance in the present case, because the proposal had met the requirement of being published in newspapers.<sup>62</sup>

Cooper's dissenting opinion contended that the amendment was in violation of the constitution, because the constitution contained a section which said all its provisions were mandatory and prohibitory. He also believed Durfee v. Harper should be upheld, because when that case was being decided there were no political consequences. He implied that the majority opinion was the result of public opinion. But his argument became very weak, when he fantasized what results the majority ruling could produce.<sup>63</sup>

In a biting ten-page dissent Galen announced that he respected his associates, but he could not be a party to a judgment which violated the constitution. His main argument was that the opinion of the majority was a rule of expediency, rather than of reason. He supported this contention by pointing out that, had Martien's application been made before the election, the rule would have been enforced. Galen's opinion, like Cooper's, concluded with an argument ad horrendum. Galen said that with the decision the majority reached, the state would face "dreadful possibilities" and "terrible consequences."<sup>64</sup>

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<sup>62</sup>Ibid.

As can be seen, both dissenting judges were finding trifling and minute discrepancies in what constituted the amending procedure. Cooper and Galen took words out of context in an attempt to substantiate an illogical fabrication of the constitution. Galen overlooked the entry of the amendment in the house journal and its publication in the newspapers. Galen also demonstrated that he would use his position on the court, as he had used his office as attorney general--to advance his political beliefs.

The decision of the court did not abruptly end the battle, as the Company-owned Democratic Helena Independent expressed its dissatisfaction. It printed in full the dissenting opinions of Galen and Cooper and titled them, "The Legislature Needn't Follow Mandates of State Constitution."<sup>65</sup> It also denounced the supreme court and Dixon. In an abrasive editorial it said that the supreme court had acted in a "slip-shod" manner, and that the majority opinion was nothing but ". . . an apology for three justices stretching their imagination." It also said ". . . that while the administration proclaimed loud and long that they won the tax commission case, the people have likewise lost the protection they are supposed to enjoy under the Constitution." It accused the governor of not doing his duty.<sup>66</sup>

Galen was also perturbed about the decision, as was shown in his opinion, and he apparently decided to show Dixon that

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<sup>65</sup>Helena Independent, October 21, 1923.

ber 23, 1923.

he still had power on the court. State v. Rouleau, a liquor case decided six days after the Tax Commission case, arose out of the arrest of a Butte bootlegger by N. J. Sero and Al Bentley, special prohibition officers. District Court Judge Joseph R. Jackson, a Democrat suspected of Company proclivities, ruled that Sero and Bentley had not been legally appointed. After an appeal to the Montana Supreme Court, Galen wrote a unanimous decision which upheld Jackson. Galen said that while the minutes of the state board of examiners, signed by Dixon and Secretary of State Charles T. Stewart, approved the appointments, the minutes did not contain information as to the name of the appointing official and the date on which they were made. Galen said that ". . . the janitors or landscape gardener at the state capital . . ." could have made the appointments. He also said that he could not tolerate "such loose methods." Thus Galen, unable to prevent sarcasm from marking his opinion, vented his ire on Dixon.

The Helena Independent, also irritated about the court's ruling on the tax commission, headlined its editorial on the Sero-Bentley case "Bungled Again." It also said

Sero was said to be an ex-convict . . . . It [the lack of a record naming who appointed them] is just one more evidence of the inefficiency, the incompetence, the total indifference of the present administration . . . . What a mess has been created at the state capitol by "Our Governor" and his political henchmen.<sup>67</sup>

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rouleau, 68 Mont. 529 (1923). Helena Independent, 1923.

No one mentioned that, since the special prohibition officers were part of the attorney general's force, it was commonly acknowledged that he would appoint them. Although Galen and the Helena Independent lost on the tax commission, this case showed that both were quick to use any opportunity to belabor Dixon in the continuing political struggle. Even if Dixon had to be dragged into a case through a far-fetched rationale, they were ready to perform whatever verbal leger-demain was necessary to do so.

Edward D. Phelan, a Helena attorney, characterized the political situation in December, 1923. In a letter to James A. Johnston, a political aide of Senator Hiram Johnson of California, he said that the bitter factional quarrels that were evidenced in the Conley case were still present. Phelan continued, ". . . today Judge Galen and Judge Horsky are lined up with a faction that is being bitterly fought by the Governor, Galen never was a Dixon man but the bitterness between the two has become much more pronounced during the past two years."<sup>68</sup> Thus, it appeared that it was common knowledge that either Galen or Dixon would "knife" each other if given the chance. Galen had the court as his weapon, and Dixon would acquire his tools later.

Before returning to the next major legal battle, one should mention two events that placed Galen in an embarrassing position. An obituary in the Butte Miner seemingly incriminated Galen as an active participant in Montana's

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elan to James A. Johnston, December 13,  
son MSS, University of California at

esoteric political strife. Colonel W. B. Rodgers, the powerful counsel for the A.C.M., died of a heart attack in the Placer Hotel in Helena on February 18, 1924. The body was found by Judge Galen, who had been scheduled for an appointment with him. This event was just one more piece of evidence that demonstrated Galen's ties to The Company. After all, why was an associate justice of the Montana Supreme Court meeting with an A.C.M. attorney.<sup>69</sup>

Moreover, Galen's veracity could certainly be questioned as a result of three sentences in the "Personals" column in the Helena Independent on October 22, 1923. The newspaper reported that Judge Galen had traveled to Deer Lodge for the weekend, where he had been a hunting guest of Frank Conley. Although Galen had testified at Conley's trial that they were not friends, the Independent certainly portrayed a different picture.<sup>70</sup>

The last major case during the Dixon administration was the Veto case. This controversy arose in 1923, when the legislature approved a budget in which the expenditures exceeded the income. Dixon felt that, since Section 12 of Article XIV of the state constitution prohibited expenditures in excess of income, he had a duty to use his veto. In exercising the veto power, he reduced the appropriations of each department until the budget was balanced. His deductions ranged from 3 to 20 percent. Dixon argued that since the legislature had adjourned,

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<sup>69</sup>Butte Miner, February 19, 1924.

<sup>70</sup>Helena Independent, October 22, 1923.

he was prevented from returning the bills, since he did not want the government crippled because of a lack of funds.<sup>71</sup>

The case was brought during the election year by R. M. Mills, a Helena attorney, against the state auditor, George P. Porter. Mills represented himself, and Attorney General Rankin represented the state. The court decided in a three to one decision that Dixon had acted unconstitutionally. Chief Justice Callaway delivered the majority opinion, with Galen and Stark concurring. Justice Holloway dissented, but did not prepare a written opinion. Justice Cooper was absent from the state.

The case involved two legal questions: (1) had the governor the power to veto a part of an item in an appropriation bill; and (2) if he has not, what was the effect of his action upon the items he attempted to scale?<sup>72</sup>

Callaway's opinion was contained in several pages, bulwarked by citations to sources on the separation of powers. He stated that Dixon was usurping legislative power because "the veto is distinctly a negative, not a creative power." Callaway also distinguished Section 12, which gave the governor power to disapprove of any item or items of an appropriation bill. He argued that Section 13 did not allow Dixon to veto a portion of an item as he had done. Callaway also pointed out that many states had similar constitutional pro-

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<sup>71</sup>Mills v. Porter et al., 69 Mont. 325, 327 (1924).

<sup>72</sup>Id. at 328.

visions, and only one, Pennsylvania, had affirmed the right of the governor to scale items in an appropriation bill.<sup>73</sup>

If one examines the Pennsylvania case, Commonwealth v. Barnett, one will find that Pennsylvania had an amending section similar to Montana's. The majority in Pennsylvania had decided that it was ". . . the right of the governor in the exercise of his independent legislative judgment to approve an appropriation in part, by reducing the amount fixed by law."<sup>74</sup> However, a vigorous dissent had held that the attorney general and the court ". . . could deprive the beneficiary of the item appropriated, unless subsequently passed over his [the governor's] veto, but he [the governor] is not empowered to take from the legislature its constitutional purpose of fixing the amount of the item."<sup>75</sup>

Callaway dismissed the Pennsylvania precedent by pointing out that since the Pennsylvania decision had been promulgated, many courts had overruled it as inapplicable in their states.

Finally, Callaway concluded his argument by pointing out that the governor was not without a remedy. He had the right and the power to veto the bill as a whole, or to veto every item in it, or to call the legislature into extraordinary session.<sup>76</sup>

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<sup>73</sup>Id. at 334.

<sup>74</sup>Commonwealth v. Barnett, 199 Penn. 161, 177 (1901).

<sup>75</sup>Id. at 193.

<sup>76</sup>69 Mont. at 337.



Associate Justice Holloway, a loyal Dixonite, did not write a dissenting opinion. In speculating on the reasons for this omission one would have to conclude that he would have relied heavily on the Pennsylvania case, which Callaway had specifically dismissed.

After examining Callaway's opinion, this writer finds that it was sound. Precedent lay with the majority. The Pennsylvania case was used only by those vainly searching for arguments to justify their illegal acts. Thus, if all the judges had been impartial and prudent, they more than likely would have ruled the same way.

However, Galen was not an impartial judge. His role in the case deserves special scrutiny, since Dixon and he were on opposite sides. In 1909, when Galen was attorney general, his interpretation of the Montana Constitution contradicted his decision in the Veto case. He said that the legislature must levy a tax sufficient to meet the appropriations, and if it did not, the expenditures would have to be curtailed. He also advised the court that the legislature could not be called into special session, because support and maintenance are ordinary functions of government.<sup>77</sup> Consequently, it can be postulated that if a political friend of his had interpreted the veto power like Dixon, Galen could have found a precedent on which to rule in his favor.

The press capitalized on the court's decision. On the

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<sup>77</sup>3 Att'y. Gen. Rep. 226-228 (1911). State v. State Board of Examiners, 40 Mont. 59 (1909).

day of the decision The Company's Helena Independent ran a picture of Dixon on the front page headlined with "Blunderer or Politician." It said that "Dixon . . . Political Grand-Standing and Blunders Cost the Taxpayers of Montana Tens of Thousands of Dollars." The Company's Anaconda Standard pointed out that, although a special session would be costly, it would serve notice that the court would adhere to a strict observance of the state's constitution. The pro-Dixon Record-Herald had earlier claimed that the action of the governor was constitutional. After the decision it pointed out that Dixon had relied on the advice of several leading Montana attorneys as well as the Pennsylvania precedent. The Republican Miles City Star blamed the supreme court for creating the need for a special session, not Dixon.<sup>78</sup>

Thus, the Dixon-Galen feud had intensified during the governor's term. The associate justice had at times effectively used the court to block Dixon's actions, and to add to the adverse publicity that the majority of the newspapers gave him. When Dixon left office in 1925, Galen had worked for The Company to contribute to his political demise.

It can also be concluded and documented that Galen disdained reform, both in theory and in practice. In Neville v. Montana (1922) he proclaimed that "reform measures are objectionable."<sup>79</sup> Thus, as a judge he was a foe of prohibi-

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<sup>78</sup>Helena Record-Herald, January 22, 1924; Anaconda Standard, January 16, 1924; Helena Independent, January 11, 1924.

tion and the Dixon programs, and a consistent friend of The Company and other adherents to the status quo.

In summarizing Galen's judicial career one finds that he was inextricably bound to his political, social and economic beliefs. He had a steadfast loyalty to The Company and the railroads, and their executives, counsel, and friends. He also had an aversion to prohibition, a disbelief in rape, a suspicion of circumstantial evidence in homicide cases, an antagonism to Dixon and his followers, and a distaste for reform. When any of these beliefs came before the court he would protect, defend, and advance them under the guise of individual rights and the United States and Montana Constitutions. When Galen's biases were not directly involved, he stressed the individual's rights, and interpreted the constitution literally. Galen's beliefs were inseparable from Galen, the man. Thus, Galen, like almost every other judge, interpreted the law according to his own convictions.

## CHAPTER V

### THE CAMPAIGN OF 1930

After a decade on the court a restless Galen made three attempts in 1930 to become a national figure. He sought positions on the Interstate Commerce Commission, and the United States Supreme Court. He also ran for the United States Senate.

In January of 1930 President Herbert Hoover, faced with a vacancy on the Interstate Commerce Commission, planned to fill it with a man from the northwestern section of the country. At once Galen received support from a wide range of men--Senator Thomas J. Walsh, U. S. District Court Judge George Bourquin, Congressman Scott Leavitt, and Galen's fellow justices on the court. He was also endorsed by the railroads, the Montana chapter of the American Legion, the Montana Wool Growers, mining companies, the state Railroad and Public Service Commission, and the banking interests, to name a few. Hoover's decision that legal training was an essential for the new commissioner eliminated the candidacy of Lee Dennis, a veteran member of the Montana Railroad and Public Service Commission, and enabled Galen to acquire the support of T. A. Marlow, Helena banker and G.O.P. stalwart, the Continental Banking Corporation, and Dennis himself.<sup>1</sup>

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<sup>1</sup>Telegrams, Lee Dennis to the President; T. A. Marlow to the President; Board of Railroad Commissioners to the Presi-

But Galen's candidacy was probably fatally damaged by the unyielding opposition of Senator Burton K. Wheeler and Joseph M. Dixon, who was now First Assistant Secretary of the Interior. Wheeler first informed Senator Walsh that he intended to block Galen's appointment. Walsh replied that he hesitated to take a stand against Galen, because they were both from Helena, and had known each other for years. Walsh suggested that Wheeler talk to the President. Wheeler then informed Hoover that he would oppose Galen. Hoover defended Galen by citing his war record and his two elections to the state supreme court. Wheeler responded: "That's right and ever since he has been on the bench every case that has come before him involving the railroad, he had decided in favor of the railroad and against the farmer and laboring man."<sup>2</sup>

At this juncture Frank Kerr of the Montana Power Company attempted to change Wheeler's mind. Wheeler refused to back down and told Kerr that Galen would just get drunk if he was appointed to the I.C.C.<sup>3</sup>

Although Wheeler probably did not need any help in blocking Galen's appointment, Dixon obviously was happy to aid the senator. Dixon wrote a letter to the White House on January 8,

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dent, January 6, 1930, Hoover MSS., Presidential Subject-- Interstate Commerce Commission.

<sup>2</sup>Letter, Burton K. Wheeler to Rosalyn Oreskovich, April 7, 1972.

<sup>3</sup>Ibid.; Wheeler, Yankee From the West, p. 114.

1930. He stressed the contempt proceedings of 1917, adding that the Anaconda Copper Mining Company's legal staff and Charles Donnelly, president of the Northern Pacific Railroad, had been the attorneys of record for Galen.<sup>4</sup>

Confronted by the opposition of Dixon and Wheeler, who would almost certainly appeal to senatorial courtesy, Hoover decided against nominating Galen. Instead, he selected Judge William E. Lee of Idaho for the position.<sup>5</sup>

Galen's appetite for higher office was unslaked, however. In March of 1930, after the death of Supreme Court Justice Edward T. Sanford, Galen applied for the appointment. In his application he cited his education, his political offices, and his experience.<sup>6</sup>

Wheeler now provided Galen with what passed for a recommendation. Withholding praise from the candidate, Wheeler declared:

In view of the fact that it has been represented to me by his relatives and friends that but for my opposition to him, you would have appointed him to the position on the Interstate Commerce Commission, I desire to state that if you see fit to appoint him to the position of associate Justice of the Supreme Court of the United States, I shall not oppose him.<sup>7</sup>

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<sup>4</sup>Joseph M. Dixon to Walter H. Newton, January 8, 1930, Hoover MSS.

<sup>5</sup>Lawrence Richey to Charles H. Williams, January 9, 1930, Hoover MSS.

<sup>6</sup>Albert J. Galen to Herbert Hoover, March 20, 1930, Hoover MSS.

<sup>7</sup>Burton K. Wheeler to Herbert Hoover, March 15, 1930, Hoover MSS.; Dillon Tribune, October 31, 1930.

It is difficult to understand Galen's motives for submitting a formal application for the Supreme Court. In view of the climate of opinion which enabled a senatorial bloc, dominated by "liberals" and pro-labor legislators, to achieve the rejection of John J. Parker of North Carolina, an able federal district court judge,<sup>8</sup> Galen's candidacy was doomed from the outset. Perhaps he was gripped by an unquenchable if unrealistic ambition, or perhaps it was a political move aimed at the autumn, when he planned to run for Walsh's seat in the United States Senate.

The senatorial nomination of the Republican party in 1930 was hardly coveted. It would present a tremendous undertaking, given the economic, social and political problems of the day. In addition to the depressed economic conditions of the nation under a Republican administration, Montana was faced with low prices for farm products, increased tariff rates, bankers unable to meet demands placed on them, unemployment, and prohibition. However, in spite of the ominous factors Galen perhaps viewed his nomination as a means of accomplishing his ultimate objective--to emulate Thomas H. Carter.

Galen's candidacy for the Senate was officially announced on April 4, 1930, at a meeting of the Republican state central committee at Great Falls.<sup>9</sup> Since the G.O.P.

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<sup>8</sup> Richard L. Watson, Jr., "The Defeat of Judge Parker: A Study in Pressure Groups and Politics," Mississippi Valley Historical Review, L (September, 1963), pp. 214-234.

<sup>9</sup> Forsyth Times-Journal, April 10, 1930.

had lost six consecutive senatorial races, its leaders finally realized, at least dimly, the accuracy of Charles H. Reifenrath's remark that the party had to organize if it were to stand a chance against the fame of Thomas J. Walsh.<sup>10</sup> Moreover, given the pervasive factional hostilities within the party, the rival elements had to come to terms with each other. Even so, defeating the hero of the Teapot Dome investigation in the circumstances of 1930 seemed so unpromising that only two candidates actively sought the nomination. Galen was joined by O. H. P. Shelley, who had announced his intention to run in November of 1929. Given Shelley's erratic political past, the party faithful thought his effort was a "joke," and did not view it seriously.<sup>11</sup>

Galen's candidacy had been discussed backstage for months prior to his announcement. Several prominent Republicans--John W. Schnitzler, the national committeeman and a rancher and banker from Froid; C. A. Rasmussen, Collector of the Internal Revenue for the District of Montana from Glendive; Wellington D. Rankin, former attorney general and a perennial aspirant for political office; and Charles H. Reifenrath, North American Accident Insurance Company agent from Helena and a prominent advisor to Joseph M. Dixon in

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<sup>10</sup>Charles H. Reifenrath to Joseph M. Dixon, November 18, 1928, Dixon MSS.

Stong to Joseph M. Dixon, March 2, 1930;  
to Joseph M. Dixon, March 3, 1930, Dixon



the 1920s--conferred with Galen in March of 1930. Galen informed them what obstacles he would have to overcome to win--the entire national Democratic party which would be "trying to save the brains of their party," and the Anti-Saloon League. Galen also asked what financial aid he could expect for his campaign, what support he would receive from the newspapers, and what were the attitudes of the different factions within the party.<sup>12</sup> Thus, when Galen's candidacy was announced it was not the result of a haphazard situation or a draft, apparently several factors induced the committee to choose Galen: his careful planning and electioneering, and the obvious unsuitability of Shelley.

Within three days Galen found an answer to a portion of one of the questions that he considered a major obstacle in the campaign. In writing Galen, Joseph M. Dixon said that if his old adversary received the backing of the state committee, he would ". . . whole heartedly support him."<sup>13</sup>

Although the promise of support and the subsequent endorsement by Dixon may have eased Galen's mind, the Walsh supporters would question Dixon's sincerity, and use the endorsement against Galen.

O. H. P. Shelley, Galen's opponent in the primary, strongly objected to the action of the state Republican committee. Refusing to buckle under, he filed on May seventh.

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<sup>12</sup> Charles H. Reifenrath to Joseph M. Dixon, March 21, 1930, Dixon MSS.

<sup>13</sup> Joseph M. Dixon to A. J. Galen, March 24, 1930, Dixon MSS.

In filing Shelley sarcastically said he was a candidate for the Republican nomination which would be decided on the fifteenth of July. He said: "I firmly believe in the integrity of the primary election law and I am opposed to any committee or group selection of candidates."<sup>14</sup> Also, it was rumored that Burton K. Wheeler was instrumental in getting Shelley to file, in the hope of muddying the waters in the Republican primary.<sup>15</sup>

Who was Oliver Hazard Perry Shelley? Shelley was born in Kentucky in 1875 and educated in the public schools there. He moved to Helena in 1900 and lived there until 1924 when he moved to Red Lodge. While in Helena he was a journalist and edited the Montana Progressive from 1914 to 1919. He owned the Valley County News of Glasgow from 1921 until his death. He moved to Red Lodge in 1924 and became editor and owner of the Carbon County News.<sup>16</sup> Shelley was a former Progressive, who became the party's national committeeman in 1916. In that year he opposed the decision of the majority, and refused to rejoin the Republican party. Shelley then became a member of the Committee of 48 in 1917 and of the National Party in 1918 before finally returning to the Republican fold. A clever political stratagem brought about his election as national committeeman in 1920. In that position

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<sup>14</sup>Carbon County News [Red Lodge], November 18, 1929, May 8, 1930; Great Falls Tribune, May 7, 1930.

<sup>15</sup>Joseph M. Dixon to F. C. McWilliams, July 11, 1930, Dixon MSS.

ity News [Red Lodge], April 16, 1934.

he fought Dixon for the control of federal patronage. Dixon was unsuccessful in his attempt to oust him as committeeman. Before his term expired, however, he lost the favor of President Warren G. Harding. He no longer had a voice in the distribution of government jobs, since he was accused of taking bribes while federal prohibition director for Montana during 1921 and 1922.<sup>17</sup> Shelley's determination to seek the nomination despite the action of the state central committee revealed his independence.

Shelley's platform was straightforward. He favored enforcement of the Eighteenth Amendment, the protective tariff, compensation for disabled veterans, federal aid to highways and cooperative marketing. He was opposed to the League of Nations, the World Court, and undue centralization of capital and finance. He also professed the campaign rhetoric voters like to hear--"I will support any legislation that will benefit the people of this state and will devote my entire time and attention to their interests."<sup>18</sup>

The primary campaign was very one-sided. Galen ignored Shelley, saying that he had to concentrate on the affairs of the supreme court. (Galen had decided not to relinquish his seat on the court in order to be a candidate for the senate.<sup>19</sup>)

Galen's proclaimed abstinence from the primary campaign

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<sup>17</sup> Helena Record-Herald, April 5, 1930; Billings Gazette, April 13, 1920; Great Falls Tribune, March 28, 1921.

<sup>18</sup> Carbon County News [Red Lodge], July 8, 1930.

<sup>19</sup> Helena Record-Herald, April 5, 1930.

was not altogether accurate. Immediately after the state committee's announcement, a statewide organization of Galen-for-Senator Clubs was publicized. This campaign tactic was started in Lewistown. The clubs, numbering about thirty, had prominent Republican businessmen as their leaders. The clubs sponsored rallies, raised money and sought support for Galen's nomination. Galen was the initiator in some towns in getting them started. Galen evaluated the clubs in a letter to C. H. McLeod, owner of the Missoula Mercantile, saying: "I will not only reap the benefits of organization, but also be given publicity without expense to me."<sup>20</sup>

Although ignored by Galen, Shelley's role could not be said to be insignificant, since the issues which he raised were re-emphasized by Walsh and his supporters in the inter-party campaign.

Shelley began his attack on Galen on May seventh. In an open letter published in the Great Falls Tribune he said: "I respectfully challenge you to no longer hide behind your judicial robes, and tell the people frankly and squarely where you stand on prohibition." He said Galen was making "a studied effort to conceal your views." He then berated Galen for not taking a stand on prohibition and for not resigning from the court. He said, ". . . you should resign, face the issues, and not put the Supreme Court in partisan politics. . . . There are plenty of qualified Republican

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<sup>20</sup>C. H. McLeod to Albert J. Galen, May 29, 1930, McLeod MSS.; Helena Record-Herald, April 12, July 12, 1930.

lawyers who could file for the office." He also criticized Galen for supporting John A. Matthews, the Democratic candidate for re-election as associate justice. He said that Galen's stenographer had been sending letters all over the state in support of Matthews.<sup>21</sup> Two months later Shelley expanded his attack. On July eighth in an editorial in his own paper he said he was the only Montana senatorial candidate in accord with Hoover. He accused Galen of being an "internationalist." He even criticized Galen for signing a petition for the World Court and a petition demanding that the American delegation to the London Disarmament Conference assume a consultative role in Europe. Shelley used the anti-League argument that the Monroe Doctrine would be sacrificed by a World Court.<sup>22</sup>

The Republican newspapers generally rallied to Galen in their editorials, and they usually refrained from mentioning Shelley. He received the support of the Libby Western News, the Flathead Courier of Kalispell, the Fergus County Argus of Lewistown as well as larger Republican newspapers.<sup>23</sup>

Shelley did receive the support of the Democratic Great Falls Tribune and the Republican Big Timber Pioneer, however, the Great Falls Tribune denounced Galen for not resigning from his position. It said: ". . . it is our belief

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<sup>21</sup>Great Falls Tribune, May 7, 1930.

<sup>22</sup>Carbon County News [Red Lodge], July 8, 1930. For Galen's name on the list of signatories, see New York Times, March 3, 1930.

nty Argus [Lewistown], April 17, 1930; Libby Argus, April 29, 1930; Helena Record-Herald, April 19,

that the people of Montana will show . . . resentment toward a Supreme court justice seeking political honors in another field." It also said that since Galen accepted the state central committee's endorsement he did not uphold the direct primary law. The Big Timber Pioneer, edited by the nominally Republican Jerome C. Williams, whose editorials were anti-Galen throughout both campaigns, asked "what does he feel he can show the House of Representatives," as he was only the choice of a select few. "Galen was born wet, has always been wet and is the ordained candidate of the wet forces in Montana."<sup>24</sup>

But the line of demarcation in the Galen-Shelley contest was not that pronounced. Shelley received the endorsement of George P. Lockwood, who had been secretary of the Republican national committee while Shelley was national committeeman. In a letter to John R. Skinner of Red Lodge Lockwood said Shelley was especially qualified, since he had been "actively connected with national politics and an arm-chair observer of congressional proceedings for many years." Peter C. Norbeck, a Republican agrarian senator from North Dakota, had Lockwood's letter inserted in the Congressional Record.<sup>25</sup> Moreover, a resolution endorsing Galen at the Fergus County Republican committee meeting

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<sup>24</sup>Great Falls Tribune, April 11, 15, 1930; Big Timber Pioneer, May 15, 1930.

<sup>25</sup>Carbon County News [Red Lodge], May 1, 1930. 72 Cong. Rec. 9654-9655 (1930).

met "with such instant and hot objections" that it was withdrawn. The Fergus County papers suppressed the story.<sup>26</sup> Thus what appeared to be unanimous support for Galen was at least partially a cover-up for a party trying to get back into power.

As expected, Galen defeated Shelley on July fifteenth, 44,103 votes to 21,774. Galen carried every county in the state. He defeated Shelley in Carbon County by two hundred votes, and he swept Lewis and Clark County six to one.<sup>27</sup> However, given Shelley's dubious Republicanism, the results were not overwhelming and showed the divisions within the party.

In the general election Galen's opponent was the incumbent, who was a national figure. Senator Thomas J. Walsh was probably the toughest candidate Galen could face. At the time of the campaign against Galen he had served three terms as senator, winning his last election by twenty thousand votes. Walsh, like Galen, was of Irish descent. Born in Two Rivers, Wisconsin, in 1859, Walsh was reared in Wisconsin, and in 1884 received his law degree from the University of Wisconsin. He then practiced law with his brother in Dakota Territory. Finally, in 1890 he moved to Helena, where his legal skills were quickly acknowledged. After two

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<sup>26</sup>Sam Teagarden to F. C. McWilliam, June 10, 1930, Dixon MSS.

<sup>27</sup>For the complete statistics, see Montana Secretary of State, "Report of the Official Canvass of July 15, 1930," Office of the Secretary of State, Helena, Montana.

unsuccessful tries at national office--the United States House of Representatives in 1906 and the Senate in 1910--he was elected to the Senate in 1912. Walsh gained his fame as the brilliant Teapot Dome investigator. A powerful man in the Senate, he worked for such legislation as woman's suffrage, the Clayton Act of 1914, and the creation of better markets and prices for silver. He was a devoted follower of Woodrow Wilson. He upheld the League of Nations, the Treaty of Versailles, and the World Court. He voted to allow the people to decide the fate of the Eighteenth Amendment, but he was an avowed prohibitionist. Moreover, Walsh was a delegate to every Democratic national convention from 1908 to 1932. In 1924, he was permanent chairman and a presidential candidate. He lost the nomination, but was offered the vice-presidential nomination, which he declined. Thus, given Walsh's outstanding record, it is no wonder that only two Republicans would seriously consider opposing him.<sup>28</sup>

Galen's first campaign speech was an attempt to vindicate his decision to keep his supreme court seat. He pointed out that during the primary he had concentrated on the affairs of the court, while other people had campaigned for him.<sup>29</sup> The following week he again brought up the subject. He said, "By the votes recorded at the primary election on July fifteenth, the Republicans of the state, knowing the judicial position I occupy, have given definite expression of their desire to have me become a candidate." He also

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<sup>28</sup>Allen Tate and Dumas Malone, eds., Dictionary of the American Biography, X (New York: Scribner's, 1929), pp. 335-394. From the West, pp. 85-86, 141, 212, 298-301.

, July 26, 1930.



pointed out that the court would be in recess during August and September, and he could take a leave of absence during the month of October. He then said that because of this ". . . surely no serious complaint will be heard. . . ." <sup>30</sup> Thus, Galen was obviously concerned with his incompatible roles as supreme court judge and senatorial candidate, and finally found a rationalization with which he felt he could convince the people. However, as will be seen, few of those supporting Walsh were consumers of the Galen approach.

Galen interrupted his early campaigning to present his platform at the Republican state convention in Helena on August thirtieth. He advocated a protective tariff and co-operative marketing as partial solutions to the agricultural problems. He said he favored compensation for disabled veterans, and federal aid for the Indians. He believed that the federal government should help build highways. Galen said he would uphold the will of the people concerning prohibition. He concluded his speech with the age-old campaign verbiage that he advocated law and order. <sup>31</sup>

The formal campaigns of Galen and Walsh opened in mid-September. Galen began his speaking tour in Big Timber, and eventually covered most of the state. Walsh opened his circuit in Helena, and was aided throughout by Burton K. Wheeler. <sup>32</sup>

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<sup>30</sup>Helena Record-Herald, July 31, 1930.

<sup>31</sup>Ibid., August 8, 1930.

<sup>32</sup>Helena Independent, September 14, 1930; Missoulian, September 14, 1930.

The campaign was complex. It revolved around a variety of manufactured issues--Galen's retention of his judicial seat, Dixon's endorsement, veteran's legislation and prohibition. In addition, Galen attacked Walsh for being a national rather than a Montana senator and an "if" man. Walsh counterattacked, implying that Galen was a member of the Ku Klux Klan and a "yes" man. Galen used his candidacies for the Interstate Commerce Commission and the United States Supreme Court as ammunition. In addition, Wheeler stumped the state for Walsh, and Dixon for Galen. Moreover, national figures from both parties came to the state to aid in the election of their respective candidates. For example: Senators Robert M. La Follette, Jr., a Wisconsin Republican, and David I. Walsh, a Massachusetts Democrat, also toured for Walsh.<sup>33</sup>

Galen's retention of his judicial seat was a major target for the opposition. As previously mentioned, Shelley had strongly criticized Galen for this, and Galen obviously felt the need to defend his action. In the autumn campaign the Helena Record-Herald argued that since Galen had been chosen in the primary while on the bench, the people had voiced their approval of his decision. However, the Big Timber Pioneer, nominally Republican, said that Galen should learn a lesson from Wellington D. Rankin who was defeated after he refused to resign his job as United States attorney while a candidate for governor. Galen should realize that the public does not

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<sup>33</sup>Washington Star, November 2, 1930, p. 1.

like the court's entering into politics. Thus, Galen's retention of his judgeship was a controversial issue throughout the campaign.<sup>34</sup>

Another manufactured issue of the campaign was the endorsement of Galen by Joseph M. Dixon, who was presently Assistant Secretary of the Interior. Since the Conley case, the Tax Commission case and the Veto case, the reciprocal animosity between Dixon and Galen had become public knowledge. From the very beginning the press questioned Dixon's endorsement. The Democratic Great Falls Tribune said there had been "no cordiality between Dixon and Galen." The outspoken Plentywood Producers News said that "Republican National Committeeman Schnitzler obtained the endorsement by sounding the clarion cry of party loyalty."<sup>35</sup>

When Dixon returned to Montana on October twentieth to campaign across the state for ten days for Galen, his presence and speeches renewed the controversy about the genuineness of his support of Galen. Dixon praised Galen for his honesty, and his experience as an attorney general and judge. The Great Falls Tribune, for example, printed a front-page story headlined "Dixon Has His Fingers Crossed," which said:

Republican leaders know that the former governor would never take the stump for his political enemy unless ordered to do it by party powers in Washington. That has happened. Joe Dixon has "made up his mind to come to

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<sup>34</sup>Helena Record-Herald, July 31, 1930; Big Timber Pioneer, May 15, 1930.

<sup>35</sup>Great Falls Tribune, April 6, 1930; Plentywood Producers News, April 11, 1930.

Montana." In the telegram informing Chairman Scanlan of his "decision," Mr. Dixon inadvertently stated, "I believe you over-accentuated what I can do."<sup>36</sup>

Most Republicans would not have to be clairvoyant to know that the press was right. Dixon supported Galen because of his loyalty to the party. In a letter in April to C. H. McLeod, owner of the Missoula Mercantile, Galen had said that, "I wish to thank you personally for your intercession with Joe Dixon in my behalf."<sup>37</sup> After McLeod had telegraphed Dixon in March, he had responded, "While Galen has not at all times given me his support, I hope I am broad enough to forget that. . . ."<sup>38</sup> Thus, it appears that the genuineness of Dixon's endorsement was widely suspected and hence of questionable value.

Both Galen and Walsh attempted to gain the support of the veterans. Veterans' benefits were probably the most popular issue of the campaign. The Republicans claimed that Galen was a war hero, and had served his country while Walsh set in Washington.<sup>39</sup> Burton K. Wheeler, who was at this time stumping the state, led the counterattack.<sup>40</sup> He criticized Galen for accepting a pension, and called him a "reactionary candidate." The Helena Record-Herald came to the aid of

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<sup>36</sup>Great Falls Tribune, October 19, 1930.

<sup>37</sup>Albert J. Galen to C. H. McLeod, April 18, 1930, McLeod MSS.

<sup>38</sup>Joseph M. Dixon to C. H. McLeod, March 24, 1930; C. H. McLeod to Joseph M. Dixon, April 4, 1930, McLeod MSS.

<sup>39</sup>Helena Record-Herald, June 6, 1930.

<sup>40</sup>Missoulian, October 5, 1930.

Galen, and in a headline said: "Galen War Record Under Attack by Wheeler, Who Stayed At Home."<sup>41</sup> In a lengthy editorial the Democratic Helena Independent expostulated that "They Served Alike." Neither Walsh nor Galen carried guns. Ridiculing the controversy, the editorial also said: "Walsh labored in the torrid climate of Washington, where the humidity . . . is nothing short of mankilling," while Galen served in Siberia under the "Polar stare and a sun which smiles pleasantly." It blamed derogatory statements concerning Walsh on the Record-Herald. The Big Timber Pioneer was critical of Galen's service, and said that he was a member of the "woolen blanket brigade."<sup>42</sup>

The second controversy in the bid for the support of the veterans arose over Galen's pension. Galen was receiving two hundred and eighteen dollars a month for 30 percent disability. Wheeler throughout argued that Galen was cheating the public, as he was not disabled. He also said that Galen had robbed the veterans of Montana of their benefits with his opinion in the Bonus case.<sup>43</sup> (In 1922 Galen had ruled that soldiers were not allowed compensatory pay from the state for service in the war.<sup>44</sup>) Galen's defender, the Helena Record-Herald, said that the ". . . veterans should

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<sup>41</sup>Helena Record-Herald, October 24, 1930.

<sup>42</sup>Helena Independent, September 12, 1930; Big Timber Pioneer, October 9, 1930.

<sup>43</sup>State ex. rel. Mills v. Dixon et al., 66 Mont. 76 (1922).

er's speeches, see Billings Gazette, July 6, ord-Herald, July 9, 1930; Missouliau, Octo-

be proud of the fine display of integrity in the bonus case. He does not perform official acts solely as the heart indicates."<sup>45</sup>

Walsh's supporters used another tactic in the maneuvers over the veterans. They publicized a letter allegedly written by hospitalized ex-soldiers at Fort Harrison, which accused Galen of not supporting the veterans. Again defending, the Record-Herald said that this fabricated letter was the "... most despicable trick launched in the present campaign." In again praising Galen's judicial opinion, it said: "His own views could not deter him from doing his duty."<sup>46</sup>

Prohibition was widely discussed during the campaign. Galen was a "wet," and Walsh a "dry." Although the two men agreed that a decision on retaining prohibition should be left to the people of each state, the Walsh supporters capitalized on Galen's wetness, insinuating that he disregarded the law. The Big Timber Pioneer commented that the issue was not so much Galen's "fitness as his wetness."<sup>47</sup> Republican Senator Smith W. Brookhart, an Iowa agrarian, said in a letter he inserted in the Congressional Record that Galen's nomination was a conspiracy of New Yorkers to elect "wet" senators. Tom Marlow, Frank Conley, and other

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<sup>45</sup> Helena Record-Herald, July 9, 1930.

<sup>46</sup> Ibid., September 9, 1930.

<sup>47</sup> Big Timber Pioneer, July 3, 1930.

Company people had met with easterners, because the New Yorkers wanted to have candidates who would vote to repeal the Eighteenth Amendment.<sup>48</sup> Wheeler commented that at the end of his campaigning he understood that Galen had been totally disabled from drinking.<sup>49</sup>

Galen's campaign tactics consisted of calling Walsh a "National" rather than a "State" senator and an "if" man, and pointing out that Walsh and Wheeler had recommended him for high positions earlier in the year. Galen claimed that Walsh's priority lay with the nation, rather than with Montana. The Helena Independent retorted that this campaign maneuver was based on "Grecian mythology," and was the "height of absurdity." It argued that Galen promised, if elected, to secure federal funds to build highways, but four or five million dollars were already available to the state.<sup>50</sup> Galen said Walsh was an "if" man since he would only act on prohibition "if" the people voted on the issue.<sup>51</sup> In addition, the Dillon Tribune published an advertisement sponsored by the state Republican committee, which contained facsimile letters of Walsh's recommendation of Galen for the I.C.C., and Wheeler's recommendation of Galen for the United States Supreme Court.<sup>52</sup>

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<sup>48</sup>72 Cong. Rec. 7318-7319 (1930).

<sup>49</sup>Letter, B. K. Wheeler to Rosalyn Oreskovich, April 7, 1972.

<sup>50</sup>Helena Independent, November 6, 1930.

<sup>51</sup>Helena Record-Herald, October 11, 1930.

ibune, October 31, 1930.

Walsh charged Galen with being a "yes" man. Walsh said that Galen would give a blanket "yes" to every action of Hoover's.<sup>53</sup>

The next attack on Galen, although not started by Walsh, appeared to be sanctioned by him. In September the Helena Independent wrote in an editorial that Galen was planning on becoming a member of the Ku Klux Klan. It said that Senator Frederick Steiwer of Oregon, the vice-chairman of the Republican senatorial committee was a personal friend of Fred L. Gifford, a former Oregonian, who was the head of the Klan. Gifford was coming to Montana to make a number of addresses on behalf of Galen. The following day the Helena Record-Herald responded that Senator Steiwer had made a flat denial of the charge. It called the Independent's news story a "deceit, falsehood, and slander." It also mentioned that, although Walsh was in Helena, he had taken no steps to refute "the alleged Portland special."<sup>54</sup>

Walsh and Galen were endorsed by a variety of organizations. Among those supporting Walsh were the officials of the American Federation of Labor and the railway brotherhoods. Galen was endorsed by groups of veterans in Yellowstone and Missoula counties and by the Sioux Indians.<sup>55</sup> Galen was initiated with Indian rites into the Sioux tribe and given

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<sup>53</sup>Helena Record-Herald, October 11, 1930.

<sup>54</sup>Helena Independent, September 17, 1930; Helena Record-Herald, September 18, 1930.

<sup>55</sup>Big Timber Pioneer, July 31, 1930; Helena Independent, October 19, 1930.



the name of Wiscarpeska, meaning White Star. He promised to work for the betterment of the Indians, of course.<sup>56</sup>

Walsh received support from newspapers outside the state of Montana. He was the favorite of the Minneapolis and Washington, D.C. dailies.<sup>57</sup> The Republicans tried to exploit these endorsements for their own purposes by contending that non-Montanans were "dipping their oars into Montana's own private political affairs."<sup>58</sup> Trying to counteract the comments of the Republicans, the Democrats argued that, unless a senator also aids other states, he can do little for his own. Thus, the endorsements reflected Walsh's achievements.<sup>59</sup>

In retrospect neither the candidates nor their journalistic supporters concentrated on viable issues. The Butte Montana Standard accurately characterized the campaign when it said the campaign was one of "pettiness and picayune politics."<sup>60</sup>

On November 4, Walsh trampled Galen at the polls. Walsh carried fifty-five of fifty-six counties, losing only Meagher County by twenty-one votes. Walsh gained 106,274 votes to Galen's 66,124--a plurality of 39,550. Galen lost Helena by six hundred votes and Silver Bow by almost four thousand. He

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<sup>56</sup>Helena Record-Herald, October 3, 1930.

<sup>57</sup>Big Timber Pioneer, July 31, 1930.

<sup>58</sup>Helena Record-Herald, July 2, 1930.

<sup>59</sup>Helena Independent, September 6, 1930.

<sup>60</sup>Butte Montana Standard, October 12, 1930.

also ran far behind the other Republican candidates in statewide races.<sup>61</sup>

Galen's defeat seemed foreordained. Early in October John Lindquist, a Butte Dixonite, had written Dixon that Walsh would beat Galen by three to four thousand votes in Silver Bow. He predicted that 90 percent of the servicemen and railroad employees, and all the drys, the majority of whom were Republicans, would vote against Galen.<sup>62</sup> After Dixon had been in Montana several days he commented to his wife, "Everybody seems greatly pleased with my coming - especially Albert's friends. It is really funny. They honestly think my coming will put him over. (Not a chance)."<sup>63</sup> After the election Dixon said that the railroad workers had been 95 percent for Walsh. He also said that the entire "Protestant dry church" as well as the "entire Catholic hierarchy" had been solidly behind Walsh.<sup>64</sup>

The explanations which Lindquist and Dixon provided for Galen's defeat were fragmentary. There were other forces at work. The most important factor was T. J. Walsh himself. Given Walsh's popularity, power, and prestige, it is highly unlikely that any Montanan could have beaten him in 1930. Moreover, the depression overshadowed all issues. The Democrats gained a slim majority in the United States House of

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<sup>61</sup>Waldron, Atlas, pp. 226-234.

<sup>62</sup>John Lindquist to Joseph M. Dixon, October 11, 1930, Dixon MSS.

<sup>63</sup>Dixon to Mrs. Joseph M. Dixon, October 29,

Dixon to W. P. Hogarty, November 12, 1930,

Representatives for the first time since 1916, and the Republican majority in the United States Senate was reduced to a single vote.<sup>65</sup> Thus, Galen's debacle was part of a nationwide anti-Republican trend. It is axiomatic that judges do badly in hard-fought political contests, which judicial races customarily are not. Lastly, Galen retained his seat on the bench. Thus, Walsh's popularity, the nationwide Republican debacle, and Galen's retention of his judgeship probably accounted for Galen's defeat. Moreover, Wheeler's stumping the state, Galen's "wetness," and lack of railroad and veteran support assured his loss.

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<sup>65</sup>George H. Mayer, The Republican Party 1854-1966 (New York: Oxford, 1967), p. 417.

## CHAPTER VI

### END OF AN ERA AND CONCLUSION

Galen returned to the political wars as a candidate for the seventh and last time in 1932, since his term on the state supreme court would expire the following year. Since 1932 was a presidential year, Galen campaigned in relative obscurity. There were four candidates in the Republican primary for two judicial seats: Galen, Sam C. Ford, also an incumbent, Albert Anderson, and Miles J. Cavanaugh. Anderson had been in private practice in Billings for twenty-three years. In 1928 and in 1930 he had tried for a position on the court. In 1928 he had run third to Ford and Cavanaugh, but in 1930 he had defeated Cavanaugh as he won the primary. However, he had lost to Democrat John A. Matthews by 345 votes. Cavanaugh, a steadfast Dixonite, had served two terms in the state house of representatives. This was Cavanaugh's fifth race for a position on the bench. In 1924, he lost to Matthews by less than fifteen hundred votes, but his deficit became greater with each election.<sup>1</sup>

Galen and Ford demonstrated the political advantages of incumbency as they dominated the primary. However, Galen ran twenty-three hundred votes behind Ford. Galen carried twenty-two counties while Ford carried twenty-six. Galen

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<sup>1</sup>Billings Gazette, July 10, 1932. Waldron, Atlas, pp. 187, 195, 208, 219, 231, 237, 239.

lost the more heavily populated counties, including Lewis and Clark, his home.<sup>2</sup>

Galen and Ford were then pitted against the Democratic candidates, Sam V. Stewart and Ralph J. Anderson. Stewart, originally from Virginia City, had a long political career. Stewart had served as county attorney, city attorney, state legislator and governor. While governor, he had been regarded as close to the A.C.M. In 1928, when he had sought to replace Wheeler in the United States Senate, critics had referred to him during the primary as The Company's man.<sup>3</sup> Ralph J. Anderson, who was from Lewistown, was virtually a political unknown. He had been elected to the state house of representatives in 1914 on the Republican ticket when that party was badly divided.<sup>4</sup>

The autumn campaign was very low-keyed. 1932 was a poor year to be a Republican candidate, as the United States was in the midst of a depression and Hoover was seeking re-election. The judicial candidates combined with their respective state tickets and advertised as a group. Although the newspapers mentioned the judicial candidates who appeared at rallies, they did not summarize what the aspirants said.<sup>5</sup>

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<sup>2</sup>For complete statistics, see Montana Secretary of State, "Report of the Official Canvass of the Primary Election," July 19, 1932, Office of the Secretary of State, Helena, Montana.

<sup>3</sup>Billings Gazette, July 7, 1932; Plentywood Producers News, May 11, 1928; Big Timber Pioneer, May 24, 1928; Wheeler, Yankee From the West, pp. 110-111.

<sup>4</sup>Billings Gazette, p. 150.

<sup>5</sup>Billings Gazette, October 7, November 6, 1932; Missoulian, 1932.

Roosevelt's overwhelming victory--he carried fifty-five of Montana's fifty-six counties--was the highlight of a Democratic sweep, which left the Republicans only the office of the Superintendent of Public Instruction. Stewart received 107,045 votes, Anderson 101,702 votes, while Ford ran third with 85,869 votes and Galen was in last place with 72,870 votes. Galen ran behind Ford as he did Holloway in 1926. Galen did not carry a single county, and ran ahead of Ford only in Carter and Glacier counties.<sup>6</sup> Given Galen's publicity in his recent senatorial campaign, it could have been assumed that he would have done better. But the severity of Galen's loss was explicable. Ford had been elected to the court originally with Anti-Saloon League backing, and the "drys" probably rejected Galen's "wetness" again. Secondly, he had retained his position as justice in 1930, and the voters could have been displeased with his bringing the court into the rough-and-tumble senatorial contest and were now evidencing it at the polls.

In 1933 Galen returned to private practice in Helena, but on the sixteenth of March, 1936, his life ended. Galen drowned in a boating accident on Holter Lake. He apparently was trying to repair the motor on his boat when he fell overboard.<sup>7</sup> An intensive search was conducted for his body. Airplanes, dynamite, and networks of draglines and grabhooks were

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<sup>6</sup>Waldron, Atlas, pp. 216, 245-252.

<sup>7</sup>Helena Record-Herald, May 19, 1936.

used. Montana Power Company, Great Northern Railway, and Anaconda Company officials headed the search.<sup>8</sup> The body was not found until the twenty-ninth of May. He was buried from the Catholic Church in Helena two days later. The Helena Record-Herald said hundreds of friends and associates paid their respects to Galen. Included among the honorary pallbearers was Charles Donnelly, president of the Northern Pacific Railroad. Donnelly had accompanied Galen throughout his political life.<sup>9</sup>

Galen left a very small estate. His personal property was valued in excess of eight thousand dollars. This included seventeen shares of the Galen Estate Company, a holding company for the family properties (Galen's shares were valued at thirty-five hundred dollars), his law books and office equipment, and a 1936 Chevrolet sedan. He also left several shares of worthless stock. The heirs were Galen's wife and son, who divided the estate equally except for his holding-company stock which went solely to the son.<sup>10</sup> However, Ethelene was more secure financially than her inheritance implied. She owned several tracts of land and had several shares of the holding-company stock in her own name. When she died in 1946, her estate was valued in excess of twenty-five thousand dollars.<sup>11</sup>

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<sup>8</sup>Ibid., May 20, 25, 30, 1936.

<sup>9</sup>Ibid., June 1, 1936.

State Board of Equalization, Report to State Finance Tax, July 17, 1936.

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The task of a biographer is complex. When he begins, his subject frequently is a somewhat shadowy figure who had loomed large in his day, but whose reknown has faded. Then, as the research becomes extensive, the subject assumes life-like proportions to the prospective biographer, who then struggles to avoid writing a panegyric or a diatribe. The biographer recognizes with Gaetano Salvemini that "We cannot be impartial. We can only be intellectually honest . . . aware of our passions and on guard against them."

Albert J. Galen was a man who induced neutrality in a few who knew him. Typically, this writer was introduced to him by former United States Senator Burton K. Wheeler, who disparaged Galen as a railroad justice and a heavy drinker, and by Galen's grandson, who extolled his virtues. In the course of the research it became evident that neither Wheeler nor Galen's grandson was free from bias. Galen, like other men, had his own prejudices, beliefs, and ideas. But Galen's controversial actions in a stormy period of Montana history does make him unattractive to students nurtured on different socio-economic philosophies.

Albert was the product of Irish ancestry. Big and robust, he inherited the rugged determination that his enterprising father, Hugh Frances, had capitalized on in the laissez-faire economy of the west. But Albert's goal was politics.



Galen had attributes which made it easier to achieve political success: money, education, and the unswerving support of the major Republican leader of Montana. He graduated from an eastern preparatory school and the University of Notre Dame, and he did graduate study in law at the University of Michigan.

But most important, his sister Ellen, through her marriage, bestowed upon Galen the loyalty and favors of her husband, Thomas H. Carter. Carter would become United States Senator and Montana G.O.P. boss. Galen was Carter's protégé. Carter placed Galen in the political arena before he was of constitutional age. He also made his brother-in-law a major cog in an effective political machine, and the beneficiary of the power of the corporations in Montana. Galen emulated Carter. Although an outstanding pupil, he never achieved the success or political finesse of his model.

The symmetry of Galen's background was broken by his marriage to Ethelene Bennett, a Christian Scientist. This was unusual, since Catholics rarely married out of the church during that era. However, it was probably an asset, as he acquired a tie to a prominent Republican, Protestant family.

Galen's first office provided the outline for his later political career. He was an astute attorney general, but his constituency was The Company, the railroads, and fellow politicians. He held that the tax rate provision in the Montana Constitution operated only when the legislature was in session. To gain corroboration for his opinion he had a suit brought in

the name of his father-in-law. The Supreme Court ruled in Galen's favor, even using his opinion. He thus helped to protect an inequitable system of taxation which favored The Company and the railroads. He stepped outside of the customary realm of the attorney general's office and prosecuted without knowing the facts in the Langhorne scandal. Before the arraignment he did not know the amount embezzled or the scope of Langhorne's offense. Galen's so-called prosecution of Langhorne, the son of a retired A.C.M. counsel, was a defense which ran the full gamut of emotions and contained a full orchestration. After all, the judge was so moved that he wept when he handed down the ludicrous sentence of one year, with parole in six months. But in both the Treasurer's case and the Bond case he acted after the facts. In the Treasurer's case, unfavorable publicity emanating from the Democrats forced Galen to move. Galen instituted a case to require the Republican state treasurer to account for and deposit the interest earned by state moneys. Also, he shrewdly filed suit against the former Democratic treasurers, although his suit against them was barred by the statute of limitations. In the Bond case he had been a member of the commission which issued the bonds. However, Galen did attempt to try to make the state institutions self-supporting by keeping the Enabling Act funds inviolate. Thus as attorney general Galen practiced the political skills he had learned from Tom Carter, and he confirmed his ties to The Company and railroads.

After voluntarily retiring from office in 1913, Galen

practiced law in Helena for eight years. But, apparently unable to find satisfaction out of office, Galen sought the Republican nomination for governor in 1916. The regulars had been badly hurt by Carter's death in 1911 and the Progressive schism the following year, however. Consequently Galen ran third, trailing Frank J. Edwards, a Rooseveltian in 1912, and E. H. Cooney, ostensibly a proponent of the equalization of taxes. Then, after the notorious Northwestern Trustee case, in which two state officials were accused of involvement in fraudulent stock transactions, Galen was tried on a charge of obstructing justice. He allegedly attempted to influence W. E. Warner, a juror; apparently Galen had given Warner hope that, after the trial was over, he would introduce the juror to legislators who might aid his railroad bill. Galen's conviction was upheld by the United States Circuit Court of Appeals and the United States Supreme Court. The appeals as well as a bout of fisticuffs with a witness whose accusations concerning Galen's behavior were uncorroborated demonstrated his deep sense of determination. However, his gubernatorial defeat and his conviction blemished Galen's record.

Galen renewed his political image in 1918. In attempting to redeem himself, Galen made a good record as a member of the Judge Advocate General's department in Siberia during the World War. Shortly after his return to Helena Galen was elected to the state supreme court in a low-keyed and unpretentious campaign.

The political skills that Galen evidenced while attorney

general were accentuated on the court. He advanced his political, social and economic beliefs. Galen was a justice who defended the rights of convicted rapists, murderers, and bootleggers. He felt that the virtue and the veracity of the complainants should be examined in cases of statutory rape. He distrusted circumstantial evidence. He cloaked the bootlegger in the Magna Charta and the Constitution. His technicalities were weak abstractions of the law. However, at times he also protected individual rights--when a woman was an alleged accomplice in a prohibition violation he attempted to protect her since she had been denied due process. When evidence obtained illegally was used to convict a defendant, Galen was the only justice who would rule on its legality.

When Governor Joseph M. Dixon, Carter's rival, tried to institute governmental reforms Galen used his position as a justice as a weapon against Dixon. There were three significant cases during Dixon's term. The first was the Conley case, in which Dixon ousted the warden in 1921. Conley had accumulated over two hundred thousand dollars on a salary which had ranged from three to five thousand dollars a year. According to an investigation he used the state lands and prisoners in his own businesses, and thus he did not have to pay wages or rent or taxes on land. These ventures enabled him to offer the state services at a low cost. Thus he received many state contracts. The Company and its supporters favored Conley because he had used prisoners to break strikes. Besides attending the trial regularly, Galen was a witness on

Conley's behalf, and offered excuses for all of Conley's actions. Moreover, he claimed he was not a friend of Conley, yet a few years later he was a guest at Conley's ranch. Although Galen denied at first that he had been Conley's attorney, he later admitted it, pointing out that his brother and Conley had been business partners. The testimony demonstrated Galen's selective recall. In the Tax Commission case, Galen, in the minority, attempted on a technicality to rule that the newly created tax commission was unconstitutional. It was even rumored that he had helped to instigate the suit to keep the tax commission from operating. In 1923 Dixon reduced appropriations in order to fulfill the constitutional provision mandating a balanced budget. Galen concurred with Callaway and Stark in deciding that Dixon had acted unconstitutionally. Since this was a sound decision, others could stress that Galen had approached the case impartially. But since Dixon could have used one of Galen's opinions as attorney general as support for his action, one can conclude that Galen's distaste for Dixon had again influenced his judgment.

Galen appeared to have ties to the railroads in addition to The Company. An attorney general's opinion, a subsequent case on tax reduction, and his ruling in the Tax Commission case emphasized his desire to protect their interests. Moreover, in the Rau case, he in essence argued that the plaintiff had to prove his innocence in cases involving contributory negligence.

judicial ethics were also questionable. Galen

demonstrated professional impropriety by representing a party before a court of which he was a member, and by his association with the Anaconda Company's counsel.

Thus, as a judge Galen was partial, vindictive, and manipulative. He protected the rights of the individual only when they did not interfere with his interests. He used the court to advance his prejudices--social, economic and political.

Galen's ambition remained unsatisfied. Apparently Senator Burton K. Wheeler and Assistant Secretary of the Interior Joseph M. Dixon were instrumental in blocking Galen's bid for the I.C.C. Whether Galen's application for the United States Supreme Court was serious is problematical. In any event it provided him with publicity before his attempt to prevent Senator Thomas J. Walsh, widely known for his Teapot Dome investigation, from winning a fourth term. But, retaining his position on the Montana bench, Galen was overwhelmed in November.

In retrospect Albert John Galen was, as most men are, a prisoner of his character, temperament and ideas. Hence he was an astute lawyer, a biased jurist, a determined but vindictive man, a defender of individual rights, yet often suspicious of the victims of crimes. Thus, an epitaph for Associate Justice Albert John Galen might be:

Protector of the Status Quo.  
Critic of Reform.  
Loyal Supporter of Thomas H. Carter  
and his Legatees.  
Determined Political Rival of Joseph M. Dixon.  
Candidate for the United States Senate in 1930.

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